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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2007-08

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules...

#### COMMITTEE NOTICES ...

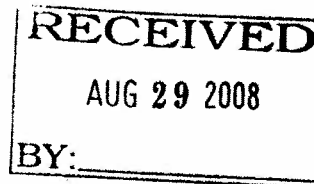
- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

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## State of Wisconsin

### Department of Children and Families

#### Rule Report for Legislative Review

#### Proposed Rules Relating to Establishment of Birth Cost Orders Based on Child Support Guidelines

DWD 40  
CR 08-066

#### Basis and Purpose of the Proposed Rules

Under s. 767.89 (3) (e), Stats., the content of a paternity judgment shall include an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expenses.

The federal Office of Child Support Enforcement has issued an interpretation for cases under Section IV-D of the Social Security Act that requires birth cost orders to be set under a state's child support guidelines that take into consideration a father's ability to pay.

The proposed rules create a procedure for determining birth cost judgments in the child support guidelines in Chapter DWD 40 that incorporates the requirements of s. 767.89 (3) (e), Stats., and allows a court to consider a father's ability to pay.

#### Public Hearing Summary

A public hearing was held in Madison on July 29, 2008. A summary of the public comments and the Department's responses is attached.

#### Response to Legislative Council Staff Recommendations

All comments were accepted.

#### Changes to Analysis Prepared under Section 227.14 (2), Stats.

- Updated to reflect the transfer of agency authority from the Department of Workforce Development to the Department of Children and Families.
- Clarified substantive language to reflect mandatory provision that the birth cost judgment not exceed one-half of the actual and reasonable cost of the mother's pregnancy and the child's birth and permissive provision that court may order an amount based on the father's income.
- Updated discussion of federal minimum wage increase on July 24, 2008, from future to past tense.

- Updated discussion of federal regulation on medical support in child support cases from a rule proposed on September 20, 2006, to a final regulation issued on July 21, 2008.

### **Final Regulatory Flexibility Analysis**

The rule may affect small businesses but will not have a significant economic impact on a substantial number of small businesses. The rule could affect a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats., but the effect would be *de minimus*.

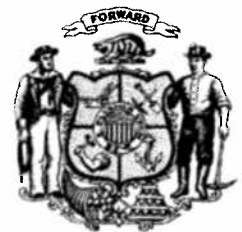
### **Department Contacts**

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267-7295

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# WISCONSIN STATE LEGISLATURE





**State of Wisconsin  
Department of Children and Families**

**Establishment of Birth Cost Orders  
Based on Child Support Guidelines**

**DWD 40**

The Wisconsin Department of Children and Families proposes to amend ss. DWD 40.03(3) and 40.04(4)(b) and to create ss. DWD 40.02 (12m), 40.05, and DWD 40 Appendix D, relating to establishment of birth cost orders based on child support guidelines.

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**Analysis Prepared by the Department of Children and Families**

**Statutory authority:** Sections 49.22 (9) and 227.11 (2) (a), Stats.

**Statutes interpreted:** Section 767.89 (3) (e), Stats.

**Related statutes or rules:** 45 CFR 302.33, 302.56, 303.31, 303.72(a)

**Explanation of agency authority.** Effective July 1, 2008, agency authority to administer the child support program was transferred from the Department of Workforce Development (DWD) to the Department of Children and Families (DCF). The Legislative Reference Bureau is currently making the technical corrections necessary to publish the DWD rules and Department of Health and Family Services (DHFS) rules that are now administered by DCF with the new agency information. The new DCF rules are expected to be published this fall. Until the DCF rules are published by the Legislative Reference Bureau, they will be referred to by their DWD or DHFS numbers.

Section 49.22 (9), Stats., provides that the department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. According to the federal Office of Child Support Enforcement (OCSE), medical support is a subset of child support.

**Summary of the proposed rule.** Under s. 767.89 (3) (e), Stats., the content of a paternity judgment shall include an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expenses. The order shall specify the court's findings as to whether the father's income is at or below the federal poverty line and specify whether periodic payments are due on the obligation, based on the father's ability to pay or

contribute to those expenses. If the father has no present ability to pay, the court may modify the judgment or order at a later date to require the periodic payments if the father has the ability to pay at that time.

If the birth costs were paid by the Medicaid program, the order for payment of birth costs under s. 767.89 (3) (e), Stats., will be to the State of Wisconsin. An unmarried mother who applies for or receives Medicaid is required to cooperate with the local child support agency in establishing paternity (if necessary), obtaining medical support, and assigning the rights to payment of medical support to the state. There are exceptions to the child support cooperation requirement for good cause and for women during pregnancy and 60 days post-partum.

Federal and state income tax refund offset is one of the primary tools for collection of birth cost orders owed to the state. OCSE recently notified Wisconsin that it will not certify the state's request for federal income tax refund offset for birth cost orders that have been determined using the methodology in s. 767.89 (3) (e), Stats. This provision requires the court to make a finding based on the father's ability to pay before *setting a periodic payment* on birth costs. OCSE's interpretation of federal regulations as issued in Policy Interpretation Question PIQ-07-01 provides that the *judgment amount* must be set according to guidelines that take into consideration the father's ability to pay.

This rule creates a procedure in the child support guidelines in Chapter DWD 40 that allows a court to take into consideration the father's ability to pay in determining the birth cost judgment amount. The court shall include in a paternity judgment or order a birth cost judgment amount that does not exceed one-half of the actual and reasonable cost of the mother's pregnancy and child's birth and may order the lowest of the following:

- An amount that does not exceed the sum of 5% of the father's current monthly income available for child support multiplied by 36 months.
- If the father's child support obligation was determined under the low-income payer provision in s. DWD 40.04 (4) and the father's monthly income available for child support is between 75% and 125% of the federal poverty guidelines, the maximum birth cost judgment amount provided in the schedule in Appendix D.
- If the father's child support obligation was determined under the low-income payer provision in s. DWD 40.04 (4) and the father's monthly income available for child support is less than 75% of the federal poverty guidelines, a birth cost judgment at an amount appropriate for the father's total economic circumstances.

Although the primary impetus for this rule is to comply with federal child support regulations to ensure that OCSE will certify birth cost orders owed to the State of Wisconsin in cases under Section IV-D of the Social Security Act, the birth cost provision will also apply to other parties, such as a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats.

The department will revise the schedule of the maximum birth cost judgment amounts for low-income payers in Appendix D every year based on changes in the federal poverty guidelines and publish notice of the revisions to the schedule in the *Wisconsin*

*Administrative Register.* Currently the schedule in Appendix C on determining the child support obligation of low-income payers is revised at least once every 4 years based on changes in the federal poverty guidelines since the schedule was last revised. The proposed rule will provide that both Appendix C and Appendix D will be revised every year based on changes in the federal poverty guidelines.

The proposed rule will also create a cross-reference to the medical support provision in s. 767.513, Stats., in the newly-created section on medical support in s. DWD 40.05. OCSE has notified Wisconsin that the medical support provision in s. 767.513, Stats., must be within the child support guidelines in Chapter DWD 40.

In addition, the proposed rule amends the section on determining income imputed based on earning capacity when information on the parent's actual income or ability to earn is unavailable. The current rule provides that the court may impute to the parent the income that a person would earn by working 35 hours per week for the federal minimum wage. This provision was created effective January 1, 2004, when the federal and state minimum wage were the same rate.

From June 1, 2005, to July 23, 2008, the state minimum wage was higher than the federal minimum wage, and the provision on imputing income when information is unavailable was inconsistently applied by counties during this time. Some counties used the state minimum wage in determining earning capacity since it was the applicable minimum wage rate, while others used the federal minimum wage as the current rule provides.

The proposed rule will allow courts to impute income to the parent at the higher of the state or federal minimum wage. This change will have no effect in the near future since the federal minimum wage is now higher than the state minimum wage, but it will ensure consistency among counties if the state rate is again higher than the federal rate. On July 24, 2008, the federal minimum wage rate was increased to \$6.55 and the state minimum wage rate is still \$6.50. Effective 7/24/09, the federal minimum wage rate will be \$7.25, and the state minimum wage is proposed to also increase to \$7.25.

**Summary of related federal requirements.** In PIQ-07-01, OCSE states that medical support is a subset of child support, and child support orders must be set under state guidelines that comply with 45 CFR 302.56. State guidelines must:

- Take into consideration all earnings and income of the noncustodial parent.
- Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.
- Provide for the child's health care needs through health insurance coverage or other means.
- Provide a rebuttable presumption that the amount determined using the guidelines is the correct child support to be awarded.

The circumstances in which past-due support qualifies for federal income tax refund offset are listed in 45 CFR 303.72(a). The list includes cases where the child support agency is providing services to a Medicaid recipient.

**Comparison with rules in adjacent states.** All states are required to comply with the OCSE interpretation that birth cost judgment amounts must be set under the state's child support guidelines.

Minnesota, Michigan, and Illinois recover a portion of birth costs paid by the Medicaid program from fathers. Iowa does not.

**Summary of factual data and analytical methodologies.** OCSE has notified states that birth cost judgment amounts must be set according to child support guidelines that take into consideration the father's ability to pay.

This rule provides that the amount of a birth cost judgment may not exceed 5% of the father's income over 3 years, with a graduated scale of lower amounts for fathers with income below 125% of the federal poverty guidelines. The 5% limit is based on a recent federal regulation on medical support in child support cases. The federal regulation provides that cash medical support or private health insurance is considered reasonable in cost to the obligated parent if it does not exceed 5% of his or her gross income. *Child Support Enforcement Program; Medical Support*, 73 Fed. Reg. 42,416, 42441 (July 21, 2008) (to be codified at 45 CFR Parts 302, 303, 304, 305, and 308).

**Effect on small businesses.** The rule may affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

**Analysis used to determine effect on small businesses.** The rule could affect a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats., but the effect would be *de minimus*.

**Agency contact person.** Attorney Connie Chesnik, Office of Legal Counsel, Department of Children and Families, (608) 267-7295, [connie.chesnik@wisconsin.gov](mailto:connie.chesnik@wisconsin.gov).

**Place where comments are to be submitted and deadline for submission.** Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Department of Children and Families, 201 E. Washington Avenue, Madison, WI, 53708 or [elaine.pridgen@wisconsin.gov](mailto:elaine.pridgen@wisconsin.gov). The comment deadline is July 30, 2008.



**SECTION 1. DWD 40.02 (12m) is created to read:**

**DWD 40.02 (12m)** “Federal poverty guidelines” means the poverty guidelines updated periodically in the Federal Register by the U.S. department of health and human services under the authority of 42 USC 9902 (2).

**SECTION 2. DWD 40.03 (3) is amended to read:**

**DWD 40.03 (3) DETERMINING INCOME IMPUTED BASED ON EARNING CAPACITY.** In situations where the income of a parent is less than the parent’s earning capacity or is unknown, the court may impute income to the parent at an amount that represents the parent’s ability to earn, based on the parent’s education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent’s community. If evidence is presented that due diligence has been exercised to ascertain information on the parent’s actual income or ability to earn and that information is unavailable, the court may impute to the parent the income that a person would earn by working 35 hours per week for the higher of the federal minimum hourly wage under 29 USC 206 (a)(1) or the state minimum wage in s. DWD 272.03. If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent’s earning capacity and the parent’s gross income or income modified for business expenses.

**SECTION 3. DWD 40.04 (4) (b) is amended to read:**

**DWD 40.04 (4) (b)** The department shall revise the schedule in Appendix C ~~at least once every 4 years. The revision shall be~~ year based on changes in the federal poverty guidelines since the schedule was last revised. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

**SECTION 4. DWD 40.05 is created to read:**

**DWD 40.05 Medical support. (1) RESPONSIBILITY FOR HEALTH EXPENSES.**

In addition to ordering child support for a child under this chapter, the court shall specifically assign responsibility for and direct the manner of payment for the child's health expenses under s. 767.513, Stats.

**(2) BIRTH COST JUDGMENT.** (a) In this subsection, "birth cost judgment" means an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth under s. 767.89 (3) (e), Stats.

(b) The court shall include in a paternity judgment or order a birth cost judgment amount that does not exceed one-half of the actual and reasonable cost of the mother's pregnancy and child's birth and may order the lowest of the following:

1. An amount that does not exceed the sum of 5% of the father's current monthly income available for child support multiplied by 36 months.

2. If the father's child support obligation was determined under s. DWD 40.04 (4) and the father's monthly income available for child support is between 75% and 125% of the federal poverty guidelines, the maximum birth cost judgment amount provided in the schedule in Appendix D.

3. If the father's child support obligation was determined under s. DWD 40.04 (4) and the father's monthly income available for child support is less than 75% of the federal poverty guidelines, a birth cost judgment at an amount appropriate for the father's total economic circumstances.

(c) The department shall revise the schedule in Appendix D every year based on changes in the federal poverty guidelines. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

**SECTION 5. DWD 40, Appendix D is created to read:**

## Chapter DWD 40

### APPENDIX D

#### 2008 Maximum Birth Cost Judgment Amounts for Low-Income Payers at 75% to 125% of the Federal Poverty Guidelines

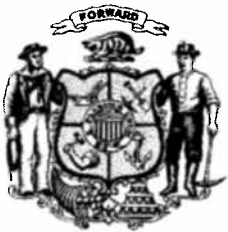
Monthly Income Up To:	Percent	Number of Months	Maximum Birth Cost Judgment Amount*
\$650	3.28%	36	\$768
\$675	3.38%	36	\$821
\$700	3.49%	36	\$879
\$725	3.60%	36	\$940
\$750	3.71%	36	\$1,002
\$775	3.81%	36	\$1,063
\$800	3.92%	36	\$1,129
\$825	4.03%	36	\$1,197
\$850	4.14%	36	\$1,267
\$875	4.25%	36	\$1,339
\$900	4.35%	36	\$1,409
\$925	4.46%	36	\$1,485
\$950	4.57%	36	\$1,563
\$975	4.68%	36	\$1,643
\$1,000	4.78%	36	\$1,721
\$1,025	4.89%	36	\$1,804
\$1,050	5.00%	36	\$1,890

\*The maximum birth cost judgment amount may not exceed the identified percentage of the father's current monthly income available for child support multiplied by 36 months.

**SECTION 6. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.



# WISCONSIN STATE LEGISLATURE



**Department of Children and Families**

**Public Hearing Summary**

**Proposed Rules Relating to Establishment of Birth  
Cost Orders Based on Child Support Guidelines**

**DWD 40  
CR08-066**

A public hearing was held in Madison on July 29, 2008. The following commented on the proposed rules:

1. Carol Medaris, Senior Legal Analyst  
Center for Family Policy and Practice  
(CFFPP)  
Madison
2. Bob Andersen, Attorney  
Legal Action of Wisconsin (LAW)  
Madison
3. Erin McBride, Attorney  
ABC for Health, Inc., and ABC for Rural  
Health (ABC)  
Madison

The following observed for information only:

1. M. Roulet, Program Director  
Center for Family Policy and Practice  
Madison
2. Pamela Kahler, Drafting Attorney  
Legislative Reference Bureau  
Madison
3. Mike Brown, Legal Intern  
ABC for Health, Inc., and ABC for Rural  
Health  
Madison

**Comment Summary and Department Response**

ABC: The proposed rules that take a father's ability to pay into account offer a more equitable assignment of cost recovery. Setting an unrealistic order just increases the amount of unpaid debt owed by parents, deters employment, reduces counties' collection rates and incentive payments, and increases administrative costs spent working unsuccessful cases. Setting a realistic order improves the chances that fathers will continue to pay over time.

CFFPP

and LAW: We generally oppose the assessment of birth costs to reimburse the state for Medicaid expenses. A federal advisory group, the Medical Child Support Working Group, submitted a report to the Department of Health and Human Services and the Department of Labor in June 2000 entitled *21 Million Children's Health: Our Shared Responsibility*. This report recommends that Congress 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 the noncustodial parent.

The report asserts that collecting birth costs runs counter to the public policy goal of encouraging mothers to seek prenatal care. In 1990, Congress eliminated the Medicaid child support cooperation requirement for women in the Poverty Level Pregnant Women Program because the cooperation requirement was deemed a potential barrier to prenatal care. States' practice of collecting expenses of the pregnancy and birth after a child is born runs counter to the intent of removing the cooperation requirement. If the mother is concerned about child support cooperation, that concern will be just as real after the birth as before it.

Collecting birth costs also discourages voluntary paternity establishment. It is more important to establish paternity and future child support and to encourage fathers to establish a relationship with their children-perhaps through joining a fatherhood program-than to recoup pregnancy-related Medicaid costs.

Furthermore, since the fathers of children receiving Medicaid are likely to be low income, the State usually cannot collect the assessed amounts anyway. Birthing costs thus artificially inflate the amount of arrears carried on the State's books and make program performance appear worse than it is. 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.

LAW: The Office of Inspector General of the Department of Health and Human Services issued two reports in 2000, *The Establishment of Child Support Orders for Low Income Non-Custodial Parents* and *State Policies Used to Establish Child Support Orders for Low Income Non Custodial Parents*. These reports found that noncustodial parents who were charged front end costs were more likely to fail to make child support payments than were parents who were not charged with such costs. Front end costs can include retroactive support, *birth related medical costs*, service of process, court or attorney fees, and the costs for paternity testing.

ABC: While still controversial, national policy trends have been against recovering birth costs at all. A ban against recovering Medicaid birthing costs was part of H.R. 4678 (2000) that passed in the House 405 to 18, earlier versions of the TANF reauthorization bills, and S. 1626/H.R. 3395 (Bayh-Obama, 2007). The mission of the child support program is undergoing a basic shift from welfare cost recovery to helping parents support their children. The child support program's reimbursement-



driven policies have interfered with states' ability to implement policies supportive of families. By eliminating its cost recovery focus, a full distribution policy would convert the child support program into an income support program for low income working parents, simplify program administration, rationalize the program's message, and change its culture.

**Department response:** The recommendations of the Medical Child Support Working Group were never adopted by the federal Office of Child Support Enforcement. Nor has a clear link been established in Wisconsin that shows that setting birth cost orders is a deterrent to the voluntary acknowledgment of paternity. However, the number of non-marital births continues to rise and it is important for non-marital fathers to accept financial responsibility for the costs associated with the births of their children. These rule amendments are designed to tie the birth cost order more closely to the father's ability to pay and, as such, are likely in the vast majority of cases to significantly reduce the amount owed.

ABC: The state must recognize two-parent families. Many unmarried low income fathers live with and support their partner and child. Imposing birth cost recovery on these low income households only exacerbates a host of other economic and social challenges. Tax intercept of arrearages gets sent first to the state, so intercepting birth cost as an arrearage puts the state in line for collection before the mom and baby.

**Department response:** The Department agrees that it is not in the best interest of the family to establish birth cost orders when the father's income has been used to determine the family's eligibility for medical assistance.

When the mom and potential father of an unborn child do not have an older child in common, the father's income is usually not taken into consideration when determining medical assistance eligibility. However, when the couple has a second child in common, and there is an intact family situation, the potential father's income is usually taken into consideration in determining medical assistance eligibility for the household. In such cases, the Child Support Agency must not obtain an order for birth costs.

In October 2004, the Bureau of Child Support developed a policy that CSAs may not seek birth cost orders for father's to repay medical assistance benefits if all of the following apply:

- The parents have an older child in common.
- The parents live together at the time the child is born.
- The intact family situation has been reported to the economic support agency and is documented in their automated case system prior to the child's birth.

CFFPP

and LAW: In the absence of a statutory change removing court authority to order birth costs, we agree that a father's ability to pay should be considered in setting the amount of his total birth cost obligation. Fathers with income below 200% of the federal poverty

level should not be ordered to pay for birth costs when those costs are paid by Medicaid.

Since 200% of the federal poverty level is the eligibility requirement for the Standard Plan in the new BadgerCare Plus program, this modification would exempt fathers from birth cost obligations in substantially similar circumstances as the children's mother, whose family income qualifies the household for Medicaid. In fact, pregnant women are eligible for the Benchmark Plan in BadgerCare Plus at 300% of the federal poverty level, which may be an even more appropriate level to begin assessing fathers for Medicaid birth costs.

**Department response:** The low-income scale for birth costs is currently capped at 125% of poverty. This cap is set at the same level as the low-income standard for setting child support orders. The Department will soon be proposing new amendments to DWD 40 to include mandated language related to medical support from the federal regulation issued July 21, 2008. During this rule-making process, the cap for low income child support and birth costs will also be reviewed.

LAW: There is nothing wrong with having the ability to estimate or impute income for child support because otherwise an individual who could work could defeat his or her responsibility simply by not working or by working at a lesser paying job.

There is something very wrong with imputing income for determining a birth cost order. Birth costs are an entirely different matter and serve only to reimburse governments for Medicaid costs, while child support is essential for the well being of children.

CFFPP: We oppose imputing income in all child support and birth cost cases in the absence of clear evidence of the father's ability to earn and his purposeful reduction of earnings. Without this additional criteria, the practice of imputing income penalizes "dead-broke" dads as well as "dead-beat" dads.

Using the chart at Appendix D, imputing income at the minimum wage would result in a debt of about \$1700 (assuming that that did not exceed one-half the total birth costs). For fathers with ongoing child support and medical support obligations, and who lack regular, sufficient earnings in the first place, this is going to be an arrears amount that is likely to not only stay "on the books" forever, but result in steadily increasing arrears for those fathers who are discouraged from ever trying to keep up.

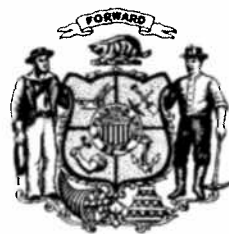
The reason the department is changing this rule is to ensure that a birth cost order is based on a father's ability to pay. Imputing income does not result in a real determination of ability to pay.

LAW: DWD 40 uses the term “monthly income available for child support” to describe the income on which child support and birth cost orders are based. This term lumps together actual income and estimated income. The rule should refer separately to actual earnings and earnings that are imputed so the reader can understand what is really being talked about.

**Department response:** A parent has a personal responsibility to a child, both for that child’s ongoing support and for the costs associated with his or her birth. The inability to impute income to a parent for the purpose of setting a birth cost order can just as easily allow a parent to defeat that responsibility. The federal Office of Child Support Enforcement has instructed states that the establishment and enforcement of birth cost orders is an appropriate IV-D activity provided that the methodology for establishing those orders is included in the state’s guidelines for setting support. Income under those guidelines is defined to include imputed income under certain circumstances. Because birth cost orders constitute a form of support, the department is using the same definition of income that it does for the calculation of all support orders.



# WISCONSIN STATE LEGISLATURE



LRB or Bill No./Adm. Rule No.  
DWD 40

Amendment No. if Applicable

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**  
Establishment of birth cost orders based on child support guidelines

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

**Local:**

1.  Increase Costs  
     Permissive       Mandatory  
2.  Decrease Costs  
     Permissive       Mandatory

3.  Increase Revenues  
     Permissive       Mandatory  
4.  Decrease Revenues  
     Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Sources Affected**

GPR    FED    PRO    PRS    SEG    SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

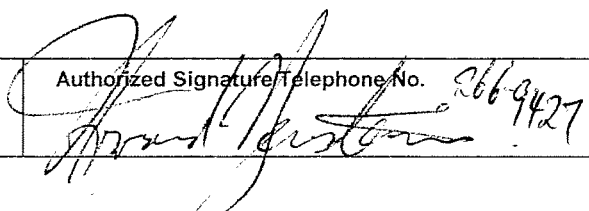
The rule allows Wisconsin to continue to collect birth cost judgments owed to the state through federal income tax refund offset. If the department failed to enact this rule to comply with OCSE requirements, the state and county child support agencies would likely experience a decrease in revenue. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

**Long-Range Fiscal Implications**

Continuation of current revenue.

Agency/Prepared by: (Name & Phone No.)  
DWD/Sue Kinas 608-264-9826

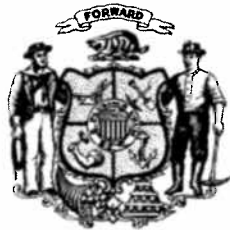
Authorized Signature/Telephone No. 266-9427



Date 6/23/08



# WISCONSIN STATE LEGISLATURE





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Richard Sweet**  
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### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **08-066**

AN ORDER to amend DWD 40.03 (3) and 40.04 (4) (b); and to create DWD 40.02 (12m) and 40.05, and DWD 40 Appendix D, relating to establishment of birth cost orders based on child support guidelines.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

06-26-2008 RECEIVED BY LEGISLATIVE COUNCIL.

07-18-2008 REPORT SENT TO AGENCY.

RNS:AS

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES             NO
  
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES             NO
  
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES             NO
  
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]  
Comment Attached            YES             NO
  
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES             NO
  
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES             NO
  
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES             NO





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 08-066

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]**

#### 2. Form, Style and Placement in Administrative Code

- a. In the "Effect on small businesses" section of the analysis, it appears that "will" should replace "will may."
- b. In s. DWD 40.05, either both subsections should have titles or neither should.

#### 4. Adequacy of References to Related Statutes, Rules and Forms

In s. DWD 40.03 (3), "Chapter" should be replaced with "ch." However, that chapter specifies several state minimum wages, such as the minimum wages for opportunity and minor employees, tipped employees, and others. Is it possible to include a more specific citation, such as s. DWD 272.03 (1m) (a)? If this citation changes in the future, the proposed rule that makes the change could also change the cross-reference.

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. DWD 40.05 (2) (b), it appears that this paragraph could be more clearly drafted. First, s. 767.89 (3) (e), Stats., provides that the court shall include in the paternity judgment or order an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the pregnancy and birth.

Second, the introductory language in par. (b) provides that the court may order a birth cost judgment that is the lowest of the amounts set forth in subds. 1. to 4. However, subds. 3.

and 4. do not set forth specific amounts but instead state what the court may use in determining the amount of the judgment for certain fathers. This is awkward grammatically.

It may be clearer to state in par. (b) that the court shall order a birth cost judgment that does not exceed one-half of the actual and reasonable cost of the pregnancy and child's birth and that the court may order the lowest of the amounts in subds. 1. to 4. In subd. 3., "the court may use" should be deleted and in subd. 4., "the court may order a birth cost judgment at" should be deleted.

Also in that paragraph, in subds. 2., 3., and 4., "a father's" should be replaced with "the father's."

b. In s. DWD 40.05 (2) (b) 2., it is not clear which 36 months are covered. Is it the 36 months immediately preceding the court order or is it referring to anticipated earnings over the next 36 months? This should be clarified.