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(FORM UPDATED: 08/11/2010)

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

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

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) (May 2012)

Ayes: (7) Representatives Kestell, Vos, Albers,
Jeskewitz, Vukmir, Grigsby and Seidel.
Noes: (0) None.
Absent: (1) Representative Sinicki.

INTRODUCTION AND ADOPTION OF ASSEMBLY
AMENDMENT 1 RECOMMENDED, Ayes 7, Noes 0

February 22, 2006 Passage as amended.

Moved by Representative Albers, seconded by Representative
Jeskewitz that **Assembly Bill 751** be recommended for passage as
amended.

Ayes: (7) Representatives Kestell, Vos, Albers,
Jeskewitz, Vukmir, Grigsby and Seidel.
Noes: (0) None.
Absent: (1) Representative Sinicki.

PASSAGE AS AMENDED RECOMMENDED, Ayes 7, Noes 0

February 22, 2006 **EXECUTIVE SESSION HELD**

Present: (7) Representatives Kestell, Vos, Albers,
Jeskewitz, Vukmir, Grigsby and Seidel.
Absent: (1) Representative Sinicki.

Moved by Representative Kestell, seconded by Representative
Albers that **Assembly Amendment 1** be recommended for
introduction and adoption.

Ayes: (7) Representatives Kestell, Vos, Albers,
Jeskewitz, Vukmir, Grigsby and Seidel.
Noes: (0) None.
Absent: (1) Representative Sinicki.

INTRODUCTION AND ADOPTION OF ASSEMBLY
AMENDMENT 1 RECOMMENDED, Ayes 7, Noes 0

Moved by Representative Albers, seconded by Representative
Jeskewitz that **Assembly Bill 751** be recommended for passage as
amended.

Ayes: (7) Representatives Kestell, Vos, Albers,
Jeskewitz, Vukmir, Grigsby and Seidel.
Noes: (0) None.

Absent: (1) Representative Sinicki.

PASSAGE AS AMENDED RECOMMENDED, Ayes 7, Noes 0

David Matzen
Committee Clerk

Vote Record Committee on Children and Families

Date: 2-22-06

Moved by: Kestell ~~Albers~~

Seconded by: ~~Albers~~ Albers

AB 751 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 1
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Steve Kestell, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Robin Vos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Sheryl Albers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Suzanne Jeskewitz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Leah Vukmir	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Tamara Grigsby	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Christine Sinicki	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Donna Seidel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>7</u>	<u>0</u>	<u>1</u>	<u> </u>

Motion Carried Motion Failed

Vote Record Committee on Children and Families

Date: 2-22-06

Moved by: Kestell

Seconded by: Seidel

AB 751 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 1
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
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 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Steve Kestell, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Robin Vos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Sheryl Albers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Suzanne Jeskewitz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Leah Vukmir	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Tamara Grigsby	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Christine Sinicki	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Donna Seidel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>7</u>	<u>0</u>	<u>1</u>	<u> </u>

Motion Carried Motion Failed

Vote Record Committee on Children and Families

Date: 2-22-06

Moved by: Albers

Seconded by: Jeskewitz

AB 751

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for: *as amended*

- Passage Adoption Confirmation Concurrence Indefinite Postponement
- Introduction Rejection Tabling Nonconcurrence

Committee Member	Aye	No	Absent	Not Voting
Representative Steve Kestell, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Robin Vos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Sheryl Albers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Donna Seidel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>7</u>	<u>0</u>	<u>1</u>	<u> </u>

Motion Carried Motion Failed

WISCONSIN CHILD

SUPPORT ENFORCEMENT ASSOCIATION

Memorandum

TO : Assembly Committee on Children and Families

FROM : Janet Nelson, Chair, Legislative Committee,
Wisconsin Child Support Enforcement Association and
Chief Legal Counsel, Milwaukee County Department of Child
Support Enforcement

DATE : November 16, 2005

SUBJECT : Testimony on 2005 Assembly Bill 751, relating to a father's
obligation for birth expenses in paternity cases

The Wisconsin Child Support Enforcement Association (WCSEA) represents Wisconsin's county and tribal child support agencies, including the Milwaukee County Department of Child Support. Both Milwaukee County Child Support and the WCSEA support passage of Assembly Bill 751.

Wisconsin's "father for every child" law – Wis. Stat. §767.45(6m) – requires child support agencies to establish paternity for every child born in Wisconsin who does not have a father named on the birth certificate. As part of the paternity establishment process, the court is required to make orders on custody, placement, support, birth expenses and court costs.

Under current law, the adjudicated father is required to contribute to the costs of the pregnancy and birth based upon his ability to pay. If the State paid for the birth through the Medical Assistance program, the child support agency asks the court to order the father to pay all or some of the birth expenses.

Prior to **DHHS v. Thorson**, 04-2267-FT (Wis. Ct. App. 2005), the *amount* of the request was based upon the cost of care, and the *manner of repayment* was based upon the father's current ability to pay.

Example: A newly adjudicated father earns \$8 per hour (\$1386 per month), and has been ordered to pay child support of \$235 per month. The CSE attorney asks that the adjudicated father be responsible for reimbursing the State for \$3000 of the \$4465 average HMO birth cost in Milwaukee County. Because of the father's low income and his new child support order, the CSE attorney does not ask that the father be ordered to begin making payments on this debt. The birth expense does not accrue interest, and will be paid, for the most part, through the interception of the father's tax refunds. Over time, as the father's

earning capacity increases, he may be asked to begin making regular payments on the birth expense when he can afford to do so.

The Court of Appeals, in **Thorson**, said that the birth expense statute requires the court to determine that the father has a *current* ability to make payments on the birth expenses in order to assess any amount against him. In the example above, then, the court could order little or no reimbursement from the father for the \$4465 expended by the State. This substantially reduces the amount of money collected for reimbursement of Medical Assistance.

AB 751 amends the language of the birth expense statute to balance (1) the financial stake of the state and the counties in obtaining reimbursement for medical assistance with (2) fathers' concerns about unreasonable repayment orders.

Through AB 751:

- The State is seeking to recover only one-half of the labor and delivery costs it pays for the father's child from the father. As a matter of State policy, child support agencies do not ask for repayment of any prenatal care costs.
- If the father has a low income, the actual recovery of those costs will wait until the father has the resources to begin making payments or until he receives tax refunds from the state or federal government. The obligation in and of itself takes no money from the family, except tax refunds, until he has the ability to begin making payments.
- The child support agency cannot use any automatic process to collect the birth expense, except for tax refund intercepts. Birth expenses are not put on the Child Support Lien Docket, so no administrative enforcement processes, such as license suspension or account seizure, are used to collect them.
- In order to get monthly payments on birth expenses, the child support agency must file a motion with the court and ask **the court** to make a repayment order. At that time, the court decides whether or not a repayment order is fair for the father to begin making.

Contrary to statements made by opponents of this bill, the federal Office of Child Support Enforcement has not adopted any policy preventing states from seeking reimbursement. The OCSE website has a link to a June, 2000 report by the Medical Child Support Working Group. This 251 page report focuses primarily on how states should establish and enforce medical support orders against parents for the benefit of their children. While one of its 73 recommendations suggested precluding states from recovering birth expenses from fathers, Congress has **not enacted** this particular recommendation. Congress **has acted** to preclude states from sanctioning mothers' assistance benefits during pregnancy if they fail to cooperate with child support enforcement, specifically for the purpose of encouraging mothers to get prenatal care. It has not taken the additional step of precluding reimbursement for birth expenses,

perhaps in recognition that (1) the two 1985 studies relied upon by the workgroup did not directly link mothers' failure to seek prenatal care with fathers' potential liability for birth expenses and (2) the fiscal reality that, for the medical assistance program to benefit the children it serves, some reimbursement from fathers is not unreasonable.

Bill opponents have argued that:

- *Fathers may be less likely to sign voluntary paternity acknowledgements if they think they will have to pay the child's birth expenses.*

→ This has not been the experience in Milwaukee County. Fathers understand that the responsibility for contributing to birth expenses is the same whether paternity is established by acknowledgement or through courtroom adjudication. Rather, the determinative factor for whether or not a father signs an acknowledgement is his level of interest in establishing his parental relationship to his child.

- *Fathers obligated to pay birth expenses may be less likely to pay their current support.*

→ If there is no requirement that the fathers actually begin paying those costs, there is no direct impact on fathers' ability to pay current child support. We explain to fathers that the debt will remain outstanding, without accruing interest, until he is able to begin making payments. So long as he makes his current child support payments, he is in good standing with the agency.

- *This bill will allow the state to intercept tax refunds to pay birth expenses even if the mother is owed child support arrears.*

→ This is simply untrue in regard to state tax refunds. State tax refund intercepts, under Wisconsin law, pay off support arrears owed to the mother before the state receives a dime. It is true that federal tax intercepts pay debts owed to the state prior to the those owed to the mother, but that is a consequence of federal law, not this birth expense bill.

- *The state's and child support agencies' funding is at risk if there is too much uncollected birth expenses outstanding.*

→ While the concern for agency funding is appreciated, it is misplaced. Federal performance incentive funding has nothing to do with birth expenses. It is based upon the percentage of current support collected and whether any payment during the year has been collected against support arrears - not birth expenses. State and county funding is truly put at risk if this bill is not approved, as it will substantially decrease federal Medical Support Liability funding.

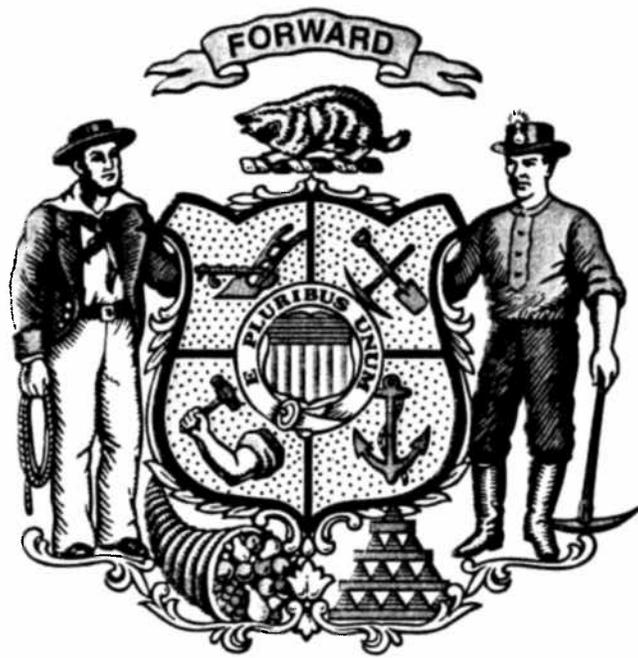
In 2004, Milwaukee County Child Support collected over \$5.4 million in birth expenses. Statewide, the figure was over \$20 million. The local agencies retain 15% of the collection for their costs, and the remaining 85% reimburses the cost of the assistance. The loss of the ability to collect a substantial portion of this money is a tremendous financial blow to both the counties and the state.

This bill provides a reasonable balance of the interests of the taxpayers in obtaining reimbursement for medical assistance and fathers in not being burdened with unreasonable repayment orders. The WCSEA and Milwaukee County Child Support strongly encourage this committee to support Assembly Bill 751.

Thank you for your time and your consideration.



Janet Nelson
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Secretary's Office
201 East Washington Avenue
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State of Wisconsin
Department of Workforce Development
Jim Doyle, Governor
Roberta Gassman, Secretary

November 17, 2005

Representative Steve Kestell, Chair
Assembly Committee on Children and Families
Room 17W
State Capitol
P.O. Box 8952
Madison, WI 53708-8952

Dear Representative Kestell and members of the Committee:

Good morning Representative Kestell and members of the Committee. My name is Connie Chesnik and I am an attorney for the Wisconsin Department of Workforce Development. Our department is responsible for administering the child support program in Wisconsin. I am here today to testify in support of AB 751 relating to requiring a court to establish a father's obligation for birth expenses.

Under current federal and state law, when a mother receives medical assistance from the State of Wisconsin, the state, through its child support program, is authorized to seek a contribution from the father to the cost of pregnancy care and delivery. The amount of that contribution has typically been based on the cost of the care and the portion of that cost that the court felt it was reasonable for the father to bear. In cases where the father was low income, the court would often establish an amount due, but not order any periodic payments until such time as the father was able to do so. The birth expense obligation would not accrue interest and did not count toward determining a payer's eligibility for the child support lien docket. If, however, a father was eligible for a state or federal tax refund, that amount could be intercepted and applied to the repayment of the birth expenses. When the father's circumstances changed sufficiently to allow him to begin making periodic payments on the debt, the child support agency would ask the court to set a repayment order.

In January of this year, the 3rd District Court of Appeals issued a decision in State v. Thorson, 278 Wis. 2d 638, 693 N.W.2d 318 (Ct. App 2005) reversing an order of the Rusk County Circuit Court obligating the father to pay birth expenses for his twin children under s. 767.51(3). In reaching their decision, the Court of Appeals did not make a distinction between the setting of an obligation and the establishment of a periodic payment schedule. Instead, the court interpreted the language of s. 767.51 to limit their authority to establishing an obligation for the repayment of birth expenses only to those cases in which the father has a current ability to make periodic payments.

This decision has significantly reduced the number of birth expense orders that county child support agencies have been able to obtain. With court caseloads increasing, the likelihood that these cases will ever be brought back to court is slim. In 2004, Milwaukee County alone collected over \$5.4 million in birth expenses, 85% of which was used to reimburse the State for Medicaid costs associated with the births of those children.

We realize that there are concerns that neither state nor federal law permits the recovery of MA related costs from the recipients of those services, namely the mothers. This bill addresses that issue as well, by limiting the recovery from fathers to one half of the total cost of care incurred.

Thank you for the opportunity to provide comments on AB 751. I hope this information is helpful in understanding the issues related to the recovery of birth expenses.

Sincerely,



Connie M. Chesnik
Attorney



LEGAL ACTION OF WISCONSIN, INC.

MADISON OFFICE

Serving Columbia, Dane, Dodge, Green, Iowa, Jefferson, Lafayette, Rock and Sauk Counties

31 South Mills Street, Madison, Wisconsin 53715

Phone (608) 256-3304 Toll-free (800) 362-3904 Fax (608) 256-0510 Web www.legalaction.org

TO: Assembly Committee on Children and Families
FROM: Bob Andersen 
RE: Assembly Bill 751, Relating to: requiring a court to establish a father's obligation for birth expenses
DATE: November 17, 2005

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family Law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and housing). As a result, our organization has been extensively involved in family law issues over the years.

I. AB 751 Replaces Judicial Discretion in Ordering Indigents to Pay Birth Costs with the Automatic Action of the Child Support Agencies – This Removes Protections from Indigents and Usurps the Court's Role.

Under s. 767.51 of the statutes, a father may be ordered to pay for 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. The court of Appeals in Schultz v. Thorsen ruled that the statute means what it says – an indigent may not be ordered to pay for costs where he does not have the resources to do so. The county argued that it would only be entering an order to be executed in the future, when the father gained resources. The court said this cannot be done.

These are medical costs that are paid for by Medicaid in most cases. The action of the state is to recover those costs from indigent people and people whose incomes are barely above poverty.

AB 751 seeks to do what the court of appeals said it could not do. It will allow an order to be entered against an indigent father that will automatically be executed at a later date when the father receives an income tax return or when some other asset or income is realized, no matter what the father's overall financial situation is. Instead of the indigent father having the protection of the court, the agency will decide on its own what is good for the indigent.



GREEN BAY – Brown, Calumet, Door, Kewaunee, Manitowoc and Outagamie Counties Phone (920) 432-4645 Toll-free (800) 236-1127 Fax (920) 432-5078

LA CROSSE – Buffalo, Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau and Vernon Counties Phone (608) 785-2809 Toll-free (800) 873-0927 Fax (608) 782-0800

MIGRANT PROJECT – Statewide Phone (608) 256-3304 Toll-free (800) 362-3904 Fax (608) 256-0510

MILWAUKEE – Milwaukee and Waukesha Counties Phone (414) 278-7722 Toll-free (888) 278-0633 Fax (414) 278-7126

OSHKOSH – Adams, Fond du Lac, Green Lake, Marquette, Ozaukee, Sheboygan, Washington, Waushara and Winnebago Counties Phone (920) 233-6521 Toll-free (800) 236-1128 Fax (920) 233-0307

RACINE – Kenosha, Racine and Walworth Counties Phone (262) 635-8836 Toll-free (800) 242-5840 Fax (262) 635-8838

This denies the father essential protection and denies the court its proper role in overseeing the equity and appropriateness of what is being done.

II. The Bill Puts a Great Strain on Poor Families who are Struggling to Stay Above Poverty

These are great costs that are imposed on poor fathers and that are imposed on low income families when the fathers are living with the mothers and the children trying to make a go of it. The imposition of these costs is harmful to those families remaining together.

III. Rather Than to Adopt AB 751, the Legislature Should be Eliminating the Collection of Birth Costs for Indigents, According to Recommendations listed at the Website of the Federal Office of Child Support Enforcement: Collection of Birth Costs is Harmful Because it (1) Puts Mothers and Infants Health at Risk by Deterring Mothers from Seeking Health Services; (2) Discourages Mothers from Seeking Paternity Judgments; (3) Discourages Parents from Acknowledgments of Paternity; and (4) Reduces the State's Compliance Performance, Because Poor People Often are Unable to Pay.

The federal Office of Child Support Enforcement of the Administration for Children and Families, Department of Health and Human Services, lists the following observations and recommendations. The website is http://www.acf.dhhs.gov/programs/cse/rpt/medrpt/chapter_3.htm:

Additional costs to be considered include costs associated with pregnancy and childbirth. Most States permit a mother to recover costs associated with pregnancy and childbirth from the alleged father when paternity is established. This allows mothers who have paid these costs themselves to receive some reimbursement from the father. These laws are reasonable and should be maintained.

Applying these laws in cases where pregnancy and childbirth costs have been covered by Medicaid, however, is highly problematic. This is because it runs counter to two other important public policy goals: (1) encouraging mothers to seek prenatal care, and (2) encouraging fathers to establish paternity.

In 1985, the National Academy of Science's Institute of Medicine issued a report entitled Preventing Low Birth Weight. The report found that significant numbers of low-income women who were at high risk of giving birth to physically impaired infants did not seek prenatal care. As a result, many children were born with severe health problems. This was tragic for the children, and also meant that

the public incurred substantial costs to care for these children. Better prenatal care would reduce these costs and give children a better chance for a healthy life. This is a benefit for the private insurance industry as well.

That same year, the Southern Governor's Regional Task Force on Infant Mortality published a report that reached similar conclusions. Both this report and the Preventing Low Birth Weight report identified the cost of care faced by uninsured mothers as a barrier to obtaining prenatal care and advised the government to expand Medicaid eligibility to deal with this problem. At the same time, these reports identified the child support cooperation requirement as a barrier within the Medicaid program itself. Some women who were eligible for Medicaid did not apply because they did not wish to establish paternity or seek medical support.

Congress responded by expanding and simplifying Medicaid coverage for pregnant women in what is called the Poverty Level Pregnant Women Program (PLPW Program). In 1990, Congress eliminated the child support cooperation requirement for participants in the PLPW Program. In doing so, Congress observed that applying the cooperation requirement to pregnant women had discouraged many of the women from seeking benefits that would give them access to early prenatal care. Indeed, the support cooperation requirements were deemed "a potential barrier to prenatal care for high-risk, low income women that would most benefit from it."

Congress recognized that eliminating the cooperation requirement would have fiscal consequences. States would no longer be able to seek reimbursement for prenatal, birthing, and post-natal Medicaid costs from the fathers of these children. Congress believed that the potential savings in human and fiscal terms, however, far outweighed the potential revenue loss. Thus Congress essentially adopted, a decade ago, a clear public policy that recognized that the value of encouraging mothers to seek and receive prenatal care far outweighed the potential cost recoupment from non-marital fathers

Despite this clear public policy, some State child support enforcement agencies continue to pursue prenatal, birthing, and post-natal costs after the child is born. For example, if a mother receives TANF benefits, the State may bring a legal action seeking to establish paternity and a child support order seeking to recoup the birth-related costs. Courts have found this practice acceptable as long as the action is brought after the child's birth.

While this practice may be technically legal, it clearly runs counter to the intent of Congress in removing the child support cooperation requirement from the PLPW program. Furthermore, there is some evidence that this practice is once again causing mothers to forgo prenatal care. From the mother's point of view,

it is irrelevant when the State pursues support. If there is a concern about cooperation, that concern will be just as real after the birth as before it.

For this reason alone, the Working Group believes that State IV-D agencies should not pursue pregnancy and birth-related costs in Medicaid cases.

Another reason to end this practice is that it discourages voluntary paternity establishment. Often the mother and father have an ongoing relationship and want to establish their child's paternity. Since the early 1990s, Congress has placed great emphasis on the value of encouraging voluntary acknowledgement. Federal law requires every State to establish laws facilitating the voluntary establishment of paternity through the use of a simple acknowledgment process available to the parents at the time of their child's birth. Congress has provided incentive payments to States to encourage improvement in paternity establishment rates and penalties for States that do not show improvement in this area. The results are encouraging, but there is still more to be done, especially in working with low-income fathers.

If fathers acquire unrealistically high child support debt when they acknowledge paternity, they will neither admit paternity nor join these programs. Even an uncomplicated birth is expensive and a C-section can easily double the cost. Nevada reports that it seeks \$3,100 for a normal delivery and \$6,700 for a C-section in its Medicaid recoupment efforts. Projects that work with low-income fathers report that imposing responsibility for birthing costs of this magnitude makes fathers very reluctant to establish paternity and join the programs.

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. This is another reason why the Working Group believes that State child support enforcement agencies should not seek reimbursement of Medicaid-covered birthing 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 thereby 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. 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. [Emphasis added]

IV. **The Office of Inspector General of DHHS Also Discourages Efforts to Seek Payment of Birth Costs from Low Income People: The More Debt a Parent Faces the Less likely the Parent is to pay Child Support**

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* – examined the policies and practices used to determine child support for low income payers. Among their findings are the following:

- 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/or the costs for paternity testing.



Jefferson County Child Support Enforcement

Elaine E. Richmond
Director

320 S. Main Street
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Jefferson, WI 53549

Telephone: (920) 674-7255
Fax: (920) 674-7435

E-mail: childsupport@co.jefferson.wi.us

TO Assembly Committee on Children and Families

FROM Elaine Richmond, Director, Jefferson County Child Support Enforcement Agency and Member, Legislative Committee, Wisconsin Child Support Enforcement Association

DATE November 17, 2005

SUBJECT Testimony on 2005 Assembly Bill 751, relating to a father's obligation for birth expenses in paternity cases

The Jefferson County Child Support Enforcement Agency supports passage of Assembly Bill 751. The current law, Wis. Stat. sec.767.45 (6m), requires child support agencies to establish paternity for every child born in Wisconsin who does not have a father named on the birth certificate. As part of this process, the court is required to make orders on custody, placement, support, birth expenses and court costs.

Under current law the court may order the adjudicated father to reimburse some portion of the costs of the birth dependent on his ability to pay. If the State has paid for the birth costs through the Medical Assistance program, the child support agency asks the court to order some repayment of the birth expenses. Past practice allowed for several variations on orders for repayment, largely dependent on the discretion of the court making the order. For instance, the amount of the reimbursement might be established and a small payback ordered based on the father's current income. Not infrequently the paybacks were deferred until some future date when the payer's earnings increased or by intercepting a tax refund in future years. In any case, it has long been the policy of the State not to seek reimbursement if the parties marry before the birth of the child or in cases where the parties live together and have subsequent children.

Recent case law, in **DHHS v. Thorson**, 04-2267-FT (Wis. Ct. App. 2005) interpreted the statute to require that the court determine that the father has a *current* ability to make payments on the birth expenses in order to assess any amount against him. This has created a considerable impediment in the collection of Medical Assistance reimbursement monies. This is creating a serious financial loss to the counties and the state of Wisconsin when over \$20 million was collected statewide in 2004 to reimburse some small portion of the birth expenses paid out through medical assistance.

Some groups opposing this legislation refer to recommendations made in 2001 by a national working group. These proposals have not been made the official recommendation of the federal Office of Child Support Enforcement (OCSE) since then nor do they appear in any of the current TANF reauthorization proposals. In light of the



Child Support....You owe it to your kids!

burgeoning costs of birth expenses on state's Medicaid programs, it is necessary to look to some recovery of these costs to support the future of this program.

I would like to share a quick look at this issue from the perspective of the county child support agency. Jefferson County has capped the requests for reimbursement of birth expenses at one-half of the cost paid by Medical Assistance for a number of years. Repayment is established if and when there is an ability of the father to pay. Our courts have found this to be a fair compromise between the father's concerns about repayment orders and the state's interest in obtaining reimbursement for assistance received.

The proponents of requiring no responsibility and no repayment of the substantial outlay of Medical Assistance would have you believe that we are picking on fathers who would be living with and supporting their children except for the requirement to repay some of the birth expenses. There is no direct link between the amount of money collected from fathers and the prenatal services offered to mothers. Once eligible, a pregnant mother is entitled to receive all of the services she needs, regardless whether any recoupment is collected from the father. In fact, a very small portion of the costs of services provided for birth expenses are ever recouped. The following open cases in our agency demonstrate what I am saying.

Father A: 9 Wis paternities adjudicated- 3 chldrn/1 moth; 2 chldrn/2 moth; 4 chldrn/4 moth; 1 case open w/newborn; 1 case w/unborn. Paid some small amts on three of his cases - now no ability to pay.

Father B: 4 Wis paternities adjudicated - same mother - never married - MA covered birth expenses. Will reimburse \$5000 of the \$14,000 paid by Medical Assistance for the younger three at rate of \$25 per month. Father a state employee who earns in excess of \$75,000/year and has available very reasonable family health insurance that would have covered the cost of the births had he married the mother of his children.

Father C: 3 Wis paternities adjudicated- same mother. Repays \$25 per month of the \$1100 reimbursement ordered for child 1. No repay for child 2 and 3 because the parties live together. He believes this is fair.

We believe it is fair to ask fathers to reimburse some of the birth expenses where they have the ability to do so. It is, after all, the Wisconsin taxpayer who keeps these entitlement programs available. Taxpayers have a right to expect that fathers who can will step up and take responsibility for bringing a new baby into this world. Taxpayers also have a right to expect that you, their legislators, will strike a healthy balance between these competing interests and support this bill which provides a modest and fair recovery of the birth expenses paid on behalf of Wisconsin families.

Your support of Assembly Bill 751 is a fair and just thing to do. Thank you for your time and consideration of this matter.





11-17-05

WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2005 Assembly Bill 751	Assembly Amendment 1
<i>Memo published: February 23, 2006</i>	<i>Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)</i>

2005 Assembly Bill 751

Currently, in a paternity judgment or order, a court has no authority to set an obligation to pay expenses relating to the mother's pregnancy and the child's birth if the father has no present ability to pay, even if payments are held in abeyance.

2005 Assembly Bill 751 provides that in a judgment or order determining paternity, including a voluntary acknowledgment of paternity, the court must establish the amount of the father's obligation to pay or contribute to expenses of the mother's pregnancy and the child's birth, and requires the court to set the father's obligation at not more than one-half of the total actual and reasonable pregnancy and birth expenses. Under the bill, the court must specify in the judgment or order whether periodic payments are due on the obligation, based on the father's ability to pay, and provides that, if the court does not require periodic payments because the father does not have the present ability to pay, the court may modify the judgment or order at a later date to require periodic payments if the father has the ability to pay at that time.

Assembly Amendment 1

Assembly Amendment 1 relates to the ability of a person obligated to pay child support (obligor) to object to a tax refund intercept of child support payments. Currently, the sole issue at a hearing on the tax intercept is whether the obligor owes the amount of child support certified. Assembly Amendment 1 requires the obligor's ability to pay to also be considered at the hearing if the obligation relates to an order for payment of the mother's pregnancy and birth expenses, and the order specifies that the court found that the obligor's income was at or below the federal poverty line at the time the paternity judgment was entered.

Legislative History

The Assembly Committee on Children and Families offered Assembly Amendment 1. On February 22, 2006, the committee recommended adoption of the amendment and passage of the bill, as amended, on votes of Ayes, 7; Noes, 0.