

Paul Farrow
County Executive

Erik G. Weidig
Corporation Counsel

Maureen A. Atwell
Director, Child Support Division



MEMO

To: Legislative Study Committee on Placement and Support
From: Maureen Atwell
Date: November 26, 2018
Re: Wisconsin Birth Cost Recovery Program

Wisconsin Statutes § 767.89(3)(e)¹ provides that a court shall order a father to repay a portion of costs incurred for the birth of his child. For birth costs paid by the State for mothers on BadgerCare, this statutory provision generates statewide repayment of \$15 to \$18 million per year. Eighty-five percent of those funds (\$12 to \$15 million) are returned to the State's BadgerCare program, and fifteen percent (approximately \$2.5 million) are distributed to county child support programs.

In 2017, Waukesha County collected approximately \$782,000 in birth costs. Of that, \$117,000 went to Waukesha County's child support agency, and \$665,000 went back to the BadgerCare program. Because the child support program receives a 66% federal match, these funds generated an additional \$227,000 in federal funding for Waukesha County's child support agency, for a total value of \$344,000. The average birth cost debt assigned to a father in Waukesha County is approximately \$2,200, is typically ordered to be repaid at a rate of \$25 per month, and does not accrue interest.

In July of this year, Wisconsin Administrative Code DCF 150.05(2)(a) was amended to include language that states: "Recovery of birth costs is inappropriate in cases where the alleged father is a member of an intact family that includes the mother and the subject child at the time paternity or support is established, and the father's income, if any, contributes to the support of the child." A subsequent directive from DCF indicates, "If the father lives in the home, it is assumed that his income contributes to the support of the child."

Further limiting the repayment of birth costs, DCF policy prohibits county child support agencies from recovering birth costs for subsequent children born to a couple (see Wisconsin Bureau of Child

Support Policy Manual, Birth Costs Policy, Section 3.0). Under the policy, a father can be ordered to repay the birth costs of the first child he has with a woman, but not for any subsequent children he has with the same woman if he lives with the family and the intact family situation was reported to the economic support agency before the subsequent child's birth.

These policies have a significant negative fiscal impact to Waukesha County. The "intact families" rule went into effect July 13, 2018. Between that date and November 13, 2018, the number of cases in Waukesha County with a court order to repay birth costs was reduced by just over fifty percent. At minimum, this will reduce Waukesha's collection of birth costs by half. It is likely to have an even larger fiscal impact, however, as fathers from "intact families" typically have higher income and a greater ability to repay birth expenses than fathers in non-intact families, and thus pay a larger proportion of the birth expenses that are collected.

The rule pertaining to intact families will reduce funding for Waukesha County's child support agency by approximately \$172,000 per year. Additionally, it will reduce Waukesha County's contribution to the BadgerCare program by nearly \$350,000 per year. The "subsequent child" policy has been in place for a number of years, so its fiscal impact has been partially absorbed, but it is estimated that it reduces Waukesha County's ability to collect birth costs on an additional twenty percent of cases.

Apart from the fiscal impact, these rules are problematic from a public policy perspective. The "intact family" rule allows certain fathers to avoid their responsibility to repay even a small portion of the costs of the birth of their children, and disproportionately benefits fathers who are most able to repay their debt to the state. Fathers in intact families typically live in a dual-income household, and will not be ordered to pay support to the child with whom they reside. The policy also creates opportunity and incentive for parties to commit fraud against the state: falsely reporting to the court or creating fraudulent documents to indicate that the father resides in the home carries a significant financial reward. Additionally, the "subsequent child" policy appears to have no rationale for allowing parties to give birth to any number of children at cost to the state, while preventing the county from collecting on the costs that are incurred.

Based on the foregoing, Waukesha County asks that the Legislative Study Committee draft and support a bill to codify in statute the county's ability to recover costs for every birth, regardless of whether the father resides in the household, and regardless of how many other children the parties have in common.

¹ 767.89(3) CONTENT OF JUDGMENT OR ORDER. A judgment or order determining paternity shall contain all of the following provisions:... (e) 1. 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 also shall specify the court's findings as to whether the father's income is at or below the poverty line established under 42 USC 9902(2), and shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses. 2. If the order does not require periodic payments because the father has no present ability to pay or contribute to the expenses, 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.