

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

CHILDREN AND YOUTH COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA
523 IRVIS OFFICE BUILDING

TUESDAY, JANUARY 25, 2022
9:03 A.M.

BEFORE :

- HONORABLE SHERYL DELOZIER, MAJORITY CHAIRWOMAN
- HONORABLE PAMELA DELISSIO, MINORITY CHAIRWOMAN
- HONORABLE TIM BONNER
- HONORABLE ANN FLOOD
- HONORABLE BARBARA GLEIM
- HONORABLE MILOU MACKENZIE
- HONORABLE ABBY MAJOR
- HONORABLE LESLIE ROSSI
- HONORABLE JASON SILVIS
- HONORABLE BRIAN SMITH
- HONORABLE TODD STEPHENS
- HONORABLE JAMES STRUZZI
- HONORABLE WENDI THOMAS
- HONORABLE GINA CURRY
- HONORABLE NANCY GUENST
- HONORABLE KRISTINE HOWARD
- HONORABLE NAPOLEON NELSON
- HONORABLE MELISSA SHUSTERMAN
- HONORABLE KATE KLUNK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

TESTIFIERS

* * *

TERRY CLARK
PRESIDENT/CEO,
PA COUNCIL OF CHILDREN, YOUTH
& FAMILY SERVICES.....15

JOHN EHRESMAN
SENIOR VICE-PRESIDENT,
BROWN & BROWN INSURANCE OF LEHIGH VALLEY.....23

CHRIS REED, ESQ.
GENERAL COUNSEL,
THE NONPROFITS INSURANCE ALLIANCE GROUP.....35

NADEEM BEZAR, ESQ.
PARTNER,
KLINE & SPECTER, PC.....48

WILLIAM VOGLER, PH.D.
CEO,
PINEBROOK FAMILY ANSWERS.....77

LAURA MAINES, ESQ.
CEO,
EVERY CHILD, INC.....81

SUBMITTED WRITTEN TESTIMONY

* * *

(See submitted written testimony and handouts
online.)

P R O C E E D I N G S

* * *

1
2
3 MAJORITY CHAIRWOMAN DELOZIER: Good
4 morning, everyone. I thank everyone for being
5 here this morning.

6 This public hearing of the House Children
7 and Youth Committee is called to order. Please
8 join me in standing, if you're able, for the
9 Pledge of Allegiance.

10 (Whereupon, the Pledge of Allegiance was
11 recited.)

12 MAJORITY CHAIRWOMAN DELOZIER: Just as a
13 reminder, this hearing is being recorded and live
14 streamed. So please be sure to silence all
15 devices -- including my own, which I forgot to
16 do. Let me see. There.

17 The ability for us to have a lot of
18 testifiers here, I thank you for everyone's time
19 to be here. I will have all the members
20 introduce themselves and I'll just announce on
21 their behalf, as well.

22 There are three voting meetings happening
23 this morning, especially to those that are not
24 used to our session day craziness. So people
25 will be coming in and out, members of many

1 different Committees, including the sponsor of
2 the bill. She has a bill running in Labor that
3 she has to be down there for. So it's no insult
4 to those that are testifying. It's simply just
5 the fact of timing with today's morning schedule.

6 So with that, I'll start for some
7 introductions.

8 REPRESENTATIVE ROSSI: Representative
9 Leslie Rossi. I represent the 59th District in
10 Westmoreland and Somerset County.

11 REPRESENTATIVE SMITH: Representative
12 Brian Smith. I represent Indiana -- northern
13 Indiana County and all of Jefferson.

14 REPRESENTATIVE GLEIM: Barb Gleim. I
15 represent portions of Cumberland County.

16 REPRESENTATIVE MAJOR: Abby Major,
17 Armstrong, Butler, and Indiana Counties.

18 REPRESENTATIVE MACKENZIE: Representative
19 Milou Mackenzie, Lehigh County, Northampton
20 County, and part of Montgomery County.

21 REPRESENTATIVE FLOOD: Representative Ann
22 Flood, the 138th District for Northampton County.

23 REPRESENTATIVE THOMAS: Representative
24 Wendi Thomas from Bucks County.

25 REPRESENTATIVE STEPHENS: Todd Stephens

1 from Montgomery County.

2 MS. KING: Anna King, Executive Director.

3 MAJORITY CHAIRWOMAN DELOZIER: Sheryl
4 Delozier. I represent the 88th District in
5 Cumberland County.

6 MINORITY CHAIRWOMAN DELISSIO: Pam
7 Delissio, the 194th, parts of Philadelphia and
8 Montgomery Counties.

9 MS. HORST: Camila Horst, Executive
10 Director.

11 REPRESENTATIVE CURRY: Representative
12 Gina H. Curry. I represent the 164th in Delaware
13 County.

14 REPRESENTATIVE GUENST: Representative
15 Nancy Guenst, part of Montgomery County and
16 Philadelphia.

17 REPRESENTATIVE SILVIS: Representative
18 Silvis, the 5th District, Westmoreland,
19 Armstrong, and Indiana County.

20 REPRESENTATIVE STRUZZI: Good morning,
21 everyone.

22 Jim Struzzi, Indiana County.

23 REPRESENTATIVE BONNER: Tim Bonner,
24 Mercer and Butler Counties.

25 REPRESENTATIVE HOWARD: Hi. Christine

1 Howard from the 167th District in Chester County.

2 REPRESENTATIVE SHUSTERMAN: Melissa
3 Shusterman from the 157th, Montgomery and Chester
4 County.

5 MAJORITY CHAIRWOMAN DELOZIER: Okay.
6 Thank you very much.

7 Today's hearing is scheduled for HBS 2213
8 and 2214, which is legislation that's been
9 introduced by Representative Kate Klunk, aimed at
10 averting an insurance crisis within the children
11 & youth provider sector. We had had long
12 conversations about some of the issues and felt
13 that the need was to vet a lot of the different
14 points of view, which is what a hearing is for.
15 So I look forward to having a lot of questions
16 that have been raised answered.

17 To summarize the issue, service providers
18 in Pennsylvania are faced with sharply increasing
19 insurance premiums and reductions in coverage,
20 and in some cases cancelation of coverage
21 altogether. As a result, some providers have
22 discontinued certain service, such as foster
23 care. And many more are facing having to make
24 the same decision.

25 Ultimately, the concern is that the

1 insurance costs will put providers out of
2 business; and the children in the system, to whom
3 we owe an obligation of care, will no longer have
4 access to the services that they require.

5 Over the course of this session, the
6 Children and Youth Committee, as a whole, we've
7 had a number of hearings dealing with the role of
8 county agencies and how they work with the
9 children and families within the system. But
10 we've -- what we haven't discussed was much of
11 the increasing frequency in which we see direct
12 service work that is done by a contract with
13 private entities.

14 So that relationship between public and
15 private is important, and one that we'll
16 investigate today and have a lot of questions on.
17 These private providers may not be doing the same
18 work that the county agencies do or used to do.
19 In some cases, some counties did do this in the
20 past and had gone -- had their services
21 privatized. But for a few key reasons, they are
22 in a very difficult legal position than the
23 county was.

24 The legal folks, the private guys have to
25 jump through a few different hoops than some of

1 our county agencies. So this raises some
2 important policy questions. And again, hopefully
3 we will explore those today. So we have a lot of
4 different perspectives represented in the
5 hearing, so I look forward to being able to ask
6 those questions by many of us that, while we've
7 had these dialogues, the questions have come up.

8 So today we have members on the panel
9 that are representing service providers, the
10 insurance sector, as well as the trial bar. And
11 I would note that we also did extend an
12 invitation to the County Commissioners
13 Association in several different counties and
14 they were unable to join us.

15 So the ability for us -- oh, and also, we
16 have a letter from the City of Philadelphia and
17 from PCYA, the Pennsylvania Children and Youth
18 Administrators Association, which is an affiliate
19 of CCAP. And if anyone didn't receive those
20 letters, we can easily get those to you. So it's
21 always good, if folks can't be here to testify,
22 that they provide written testimony, just so that
23 we can have their perspective. So I appreciate
24 that.

25 And with that, I will hand it over to

1 Chairman Delozier.

2 MINORITY CHAIRWOMAN DELISSIO: Thank you,
3 Representative Delozier.

4 Good morning, everyone. And you know,
5 this is our second year as chairs, majority and
6 minority chairs for this Committee, and I've been
7 impressed with the amount of work we have been
8 able to accomplish in a very collaborative way.
9 And I really look forward to hearing from the
10 testifiers today.

11 My professional background is long-term
12 care. I've lived through my share of soft and
13 hard insurance markets. So I can relate to the
14 problem, and I think we're hopefully
15 collaborative enough and creative enough to come
16 up with solutions that ultimately ensure that our
17 youngest citizens are indeed safe and being
18 provided these services that they are so very
19 much in need of.

20 So welcome and thank you for being here
21 today.

22 MAJORITY CHAIRWOMAN DELOZIER: Thank you.
23 Representative Klunk, do you want to say
24 something about your bills?

25 REPRESENTATIVE Klunk: Thank you. And

1 good morning.

2 Thank you, Chair Delozier, Chair
3 Delissio, and colleagues and guests here this
4 morning. Thank you so much for being a part of
5 this conversation here today on this important
6 and very challenging topic when it comes to
7 social service providers for our children here in
8 Pennsylvania.

9 The issues of liability, damages, and
10 insurance in the Children & youth service
11 provider sector are very complex and
12 multifaceted. I've come to know this over the
13 past couple of years that I've been working on
14 these bills. It is vitally important that we
15 engage on this issue and address the growing
16 insurance affordability crisis to ensure that
17 providers of foster care, adoption, residential
18 treatment, other placement services remain able
19 to do the good work that they're doing here in
20 Pennsylvania, while also being able to obtain
21 professional liability insurance required for
22 their operations.

23 The long term viability of these
24 organizations is absolutely crucial for long term
25 cost control, and particularly for county local

1 governments would otherwise be responsible for
2 finding placements for these children and
3 providing these services that are so vitally
4 needed.

5 For the last couple of years, in a time
6 of renewing their professional liability
7 policies, these private service providers have
8 faced increasing costs, decreased coverage with
9 more and more limited coverage options. So this
10 is a dire situation that is driven in part by
11 county contracts that often require the provider
12 to completely defend and indemnify the county
13 agency, regardless of if they are not -- if they
14 are or are not at fault.

15 As a result, the providers of these
16 essential services for some of our State's most
17 at-risk youth, in areas like behavioral health,
18 foster care, adoptive services, are finding it
19 increasingly cost-prohibitive to operate and
20 sometimes literally impossible in trying to
21 obtain that professional liability insurance.

22 To tackle this -- I hate to say crisis,
23 but I think we might be potentially entering that
24 point -- I have tried to come up with two
25 different ways. And I am certainly open to

1 additional ideas in trying to solve this crisis.
2 But first is HB 2213, which would provide
3 limitations on damages that would apply under
4 Title 42 to actions against local government
5 agencies. They would also then apply to actions
6 for damages against 501(C)(3) non-profit
7 organizations that are subject to regulation
8 under Pennsylvania Code Title 55, Chapters 3680
9 and 3800.

10 So this would effectively limit recoverable
11 damages to an aggregate of \$500,000 in actions
12 against both local government agencies and
13 non-profit organizations that would provide those
14 essential services to our children and youth. HB
15 2213 would help to ensure the continued viability
16 of these service providers.

17 I won't go into all of the details
18 because they will come out here in the hearing,
19 but that does give you a taste of what HB 2213
20 would do. HB 2213 would hopefully mean that more
21 of that money would stay in the system to be able
22 to help children and make sure that we are
23 ensuring that more children are able to get the
24 care that they need.

25 HB 2214 is another bill that we've been

1 working on, another way to, you know, potentially
2 solve this problem that could work in tandem with
3 2213 or it could potentially work on its own.

4 And that would amend Title 67 by providing that
5 an indemnification clause purporting to
6 indemnify, hold harmless, or ensure the county
7 agency for damages arising from the agency's own
8 negligence would be void.

9 It's important to note that that bill
10 does not provide immunity to agencies for any
11 type of claim due to their own negligence.
12 Instead, each party, both the government agency
13 and the service provider, would each be required
14 to obtain ownership of that particular liability
15 and really take ownership of their own actions,
16 where that particular negligence might have
17 occurred.

18 And this is a really important tenet of
19 good risk management, where everyone involved
20 takes their fair share of the risk and the
21 liability. I do believe that this could
22 potentially create a more safe and fair system
23 for everyone included, including those at-risk
24 youth who we're trying to help.

25 The goal of 2214 would be to help

1 stabilize those insurance markets and really
2 ensure that there is coverage to all -- available
3 to all providers in this market.

4 victims of abuse and neglect, they
5 absolutely must have that ability to obtain
6 compensation for incidents and decisions that
7 have harmed them. Absolutely. That is
8 unequivocal, but we also need to make sure that
9 we are not bankrupting our child services section
10 here in this State.

11 We need to find a solution. We need to
12 work together collaboratively on this. Because
13 if we don't, we could potentially have a system
14 that doesn't exist. And then where do these
15 children go? Where do they get those services?
16 Does that come back to the county? I don't know.

17 And there's so many unknowns as to how
18 this could play out. And I really do commend the
19 chairwoman for bringing this issue forward, and
20 all of the people that have worked with me in
21 trying to get here today with these two bills.
22 This is not going to be an easy task to solve.
23 But I really do hope that we can work
24 collaboratively in trying to find a solution.

25 I look forward to hearing testimony today

1 and to look forward to working with everyone who
2 is testifying today to try and find a solution
3 because we owe it to our children to do so. So
4 thank you.

5 And I do have to skedaddle to go to
6 another meeting. And I will be back and popping
7 in and out today, but my staff here is to cover.
8 So thank you.

9 MAJORITY CHAIRWOMAN DELOZIER: Thanks,
10 Representative Klunk.

11 We will start with our first panel at
12 this point. And the first panel is comprised of
13 Terry Clark, President and CEO of the
14 Pennsylvania Council of Children, Youth & Family
15 Services.

16 And he will be followed by Chris Reed,
17 General Counsel to The Nonprofits Insurance
18 Alliance Group based in Santa Cruz, California.
19 So an early morning for you. Thank you very
20 much.

21 And John Ehresman, Senior Vice President
22 at Brown & Brown Insurance of the Lehigh Valley.

23 So we'll start with Mr. Clark.

24 MR. CLARK: Good morning. Good morning,
25 Chairperson Delozier, Delissio, and members of

1 the House Children & Youth Committee.

2 I'm welcome to be here today, so I
3 appreciate the opportunity to testify on behalf
4 of Representative Klunk's HB 2213 and 2214. My
5 name is Terry Clark, and I am the President and
6 CEO of the Pennsylvania Council of Children &
7 Youth and Family Services. Some of you may know
8 us as PCCYFS.

9 We've been around for many, many years
10 and we represent and advocate on behalf of over
11 100 providers, private providers in the
12 Commonwealth who provide everything from in-home
13 services, foster care services, adoption
14 services, residential treatment facilities. Some
15 of them have brick-and-mortar educational
16 programs where the -- where they're educating
17 kids in their facilities.

18 So I do want to make sure you all know
19 that I did submit written testimony that goes
20 into much more detail. And because of time
21 factors, I just want to hit on a few points. And
22 then I'm going to turn it over to my colleagues
23 in the insurance world to help add to what they
24 know and have helped us all understand what might
25 be some of the solutions to the problem.

1 I do want to first say that PCCYFS
2 members are committed -- and I repeat they are
3 committed to providing excellent care in a safe
4 and supportive environment when they're working
5 with children. That's first and foremost.
6 Unfortunately though, in the last few years, what
7 you've already heard Representative Klunk start
8 to talk about here, and thus the reason for the
9 legislation being drafted is, placement service
10 providers have really found liability insurance
11 to barely be affordable. And in some cases, they
12 can't get it at all. And in other case, they're
13 dropped when they come up for renewal or before
14 renewal.

15 And that leaves them in a crazy place
16 when they're trying to run programs for children
17 as to what they're going to do, whether or not
18 they have to close their doors, whether or not
19 they have to really reduce programs and services.
20 And just in the last two years, since I've been
21 in this role at PCCYFS, we've had -- and I'm only
22 aware because not everybody, every provider is a
23 member of PCCYFS -- but we're aware of four, four
24 providers that had to close their doors.

25 One was from Philadelphia, and they had

1 to -- they had over 130 or 40 foster families and
2 children that had to be placed with another
3 provider because they could not afford the
4 insurance anymore.

5 I had another one of our members who runs
6 a residential treatment facility in Womelsdorf
7 and was trying to do some things different.
8 Rather than just looking at having a facility to
9 place children in a residential-type group home
10 facility, he wanted to expand his program and
11 services in offering foster care services.

12 Under the Federal Family First Prevention
13 and Services Act, which is coming down the pike -
14 actually, it's already here; Pennsylvania is
15 implementing it -- one of the goals is to try to
16 look at alternative sources, alternative programs
17 for children, rather than just congregate care.
18 And so he was trying to look at adding on foster
19 care.

20 As soon as he had that conversation,
21 after his board of directors had made the
22 decision to go in that direction, he was told by
23 his insurance director that they would drop him
24 in terms of his insurance. So he had to quickly
25 try to figure out what he was going to do, if he

1 was going to move into the foster care realm, to
2 get insurance if his current insurance dropped
3 him. So it's a problem.

4 And I also want to say, this is
5 regardless -- regardless -- I don't know what
6 everyone else is going to testify to, but this is
7 regardless of claim history for some of our
8 providers. So this isn't just an issue because
9 providers have had claims. We have providers who
10 have had no claims, and they still are having the
11 issue of getting insurance that's affordable.
12 They are still having issues of losing, when they
13 come up for renewal, having parts of their
14 coverage reduced. And it's getting to the point
15 where they're trying to figure out if they need
16 to stay in the space or get out of it. And that
17 will be a travesty to the child welfare system.

18 I have worked in child welfare for almost
19 30 years. I ran the York County Children & Youth
20 Agency for five years. I worked in Berks County
21 Children & Youth for 10 years. I worked at the
22 Department of Human Services for 13 years. So
23 I've been around, and I have not seen more of a
24 concern from the private providers in terms of
25 their ability to stay afloat and be able to

1 sustain the services that they're providing.

2 One of the things that I do want to make
3 sure that I'm clear about, or that we are clear
4 about, when it comes to the legislation that's
5 being introduced, of course, we already know that
6 HB 2213 seeks to limit damages. But HB 2214, I
7 want to spend some time at least mentioning with
8 2214, the importance there. Of course that's --
9 it's something that's really making it
10 unenforceable, using language in county
11 contracts, but only when that contract language
12 seeks to unfairly limit or shift liability to the
13 provider agency, regardless of who is at fault.

14 So just to be clear, it does not -- it
15 does not attempt to switch liability to a county
16 provider or their agency when it really was the
17 agency provider or their staff that caused the
18 harm. That's not what we're trying to do. So
19 we're not trying to shift it if the provider was
20 the one that was really responsible for what
21 happened to the children.

22 One of my other points -- and then I'll
23 move on and let some other folks talk -- but one
24 of the points I want to bring up is we worked
25 with the Nonprofit Insurance Alliance, who is

1 here to testify today, in reviewing county
2 contract language across the Commonwealth. And
3 in our review, we did see that many of the county
4 contracts do require providers to indemnify the
5 county for negligence and wrongful acts of the
6 provider. That's reasonable. There's nothing
7 wrong with that. And that makes sense, right?

8 But there are also many contracts that
9 are starting to require providers to also
10 indemnify the county for the negligence and
11 wrongdoing of the county and their staff and
12 other partners in the county. That makes no
13 sense to us. Insurance companies are especially
14 resistant to covering risk exposure of government
15 agencies over which the provider has no control.

16 You'll hear from one of our other
17 witnesses that will testify this morning about
18 the concerns over some of the decisions that they
19 don't have the ability to change the opinion of
20 the county, and they still have to move forward
21 with taking that child, providing a particular
22 program and services, even though they've said we
23 don't have the program for that child, we don't
24 have the right service for that child.

25 You can't take a child that's a sexual

1 offender and put them in a program that has no
2 services for sexual offenses, right? It doesn't
3 make sense. Sometimes they're still asked to do
4 that or told to do it.

5 The other -- my last point here is, as
6 we've heard already, that this problem really is
7 coming from a variety of different systemic
8 issues that are happening in the field today, and
9 we know that the solution is really not an easy
10 one. I do want to say that we do not expect that
11 these pieces of legislation will totally solve
12 the problem. We know it's not going to totally
13 solve the problem, but we know it's a beginning.
14 It's a step in the right direction.

15 So we don't want folks to think that by
16 passing these two pieces of legislation that it's
17 done and over. There's still more work that
18 needs to be done. But I do want to say that
19 HB 2214 really does offer insurers a clear
20 understanding of who and what they're insuring
21 and it's really allowing them to develop a
22 reasonable estimate of risk. That's what we're
23 trying to do.

24 without these legislative solutions,
25 insurance carriers will continue declining

1 offering insurance to providers because of the
2 likelihood that the provider will assume the
3 responsibility in wrongdoing of the county.
4 Ultimately, this fix, we hope, will help more
5 carriers stay in the market, increase
6 competition, increase the pool of insurance
7 options, and of course, help balance the cost for
8 providers.

9 with that, I will turn it over to John.

10 MR. EHRESMAN: (Inaudible.)

11 MAJORITY CHAIRWOMAN DELOZIER: John, can
12 you just hit your mike? It's not on, so those
13 that are on the live stream cannot hear you as
14 well.

15 MR. EHRESMAN: I'm sorry.

16 MAJORITY CHAIRWOMAN DELOZIER: That's
17 okay.

18 MR. EHRESMAN: So around 2018-2019, about
19 38 states passed what are called revivor
20 statutes, which -- and a lot of the impetus for
21 that was issues with abuse in the Catholic
22 church, the Boy Scouts, and other things like
23 Jerry Sandusky and Dr. Larry Nassar. It was kind
24 of a whole thing that was going on around that
25 time.

1 So 38 states passed what are called
2 revivor statutes. And what that did, it put a
3 stop -- the normal competition in the insurance
4 market hit a brick wall. And all of the
5 insurance companies stopped and look at this and
6 said, wow, we're now on the hook for what
7 happened 30 years ago; and we're also now on the
8 hook for what could happen today -- 30 years from
9 now today.

10 So when you have that usual three to five
11 insurance companies competing and driving down
12 prices when these revivor statutes passed, the
13 insurance market literally evaporated overnight.
14 And we had to deal with this because we're
15 placing the insurance with these insurance
16 companies.

17 And Representative Klunk used the word
18 crisis very carefully in her opening remarks.
19 We're at a crisis right now because we're really
20 down to one insurance company. And Chris Reed is
21 on the monitor there at that insurance company.
22 And they're not really even a traditional
23 insurance company. They're a non-profit risk
24 retention group.

25 The commercial insurance market that has

1 served PCCYFS members for years is basically --
2 has evaporated or they've created insurance
3 policies that are so stripped down and so
4 expensive that it just makes it very difficult to
5 operate. So a lot of providers are in a
6 situation where they're one claim away from
7 losing their insurance, losing their county
8 contracts, going into bankruptcy.

9 And it's -- the insurance market is very
10 difficult right now. That whole peak and trough
11 of a normal insurance market and competition is
12 gone. We're really down to one market. Or if
13 somebody really gets in trouble, what's happening
14 is you're going to London markets, Lloyd's of
15 London markets. And they just -- they just throw
16 out numbers that are ridiculous.

17 It's not uncommon for a smaller provider,
18 for a London market to charge \$100,000 a premium
19 for \$100,000 of abuse coverage. For a larger
20 provider, it's not unusual for a London market to
21 charge a million dollars a premium for a million
22 dollars of coverage.

23 Imagine having a \$50,000 sport utility
24 vehicle and you go to State Farm. How much is my
25 insurance for the year? \$50,000. That's how

1 crazy this market has gotten. So a lot of
2 providers, small, medium, and large, are on a
3 precipice of having a real crisis. And that's my
4 perspective of looking at this for 30 years. The
5 normal competitive market that's been in place
6 over a long period of time is basically gone.

7 with that, I will hand it over to
8 Chris.

9 MR. EHRESMAN: All right. Good morning.
10 Can everyone hear me okay?

11 MAJORITY CHAIRWOMAN DELOZIER: Yes.
12 Thank you.

13 MR. EHRESMAN: Thank you so much, Chair
14 Delozier, Chair Delissio, members of the House
15 Children & Youth Committee.

16 I am Chris Reed, General Counsel for the
17 Non-Profits Insurance Alliance. I'm happy to be
18 with you this morning talking on this really
19 important topic. And on behalf of, really, the
20 24,000 members that are non-profits that are our
21 member owners and our insureds, thank you for the
22 opportunity to talk about this issue this
23 morning.

24 As it was mentioned, we are a 501(3)(c)
25 ourselves. We are an insurance company that is a

1 non-profit. We only insure non-profits. Out of
2 the 24,000 that we insure, there's about 580 in
3 Pennsylvania. Many of those are child-serving
4 organizations.

5 And our focus as a company is to keep
6 those people in business and providing services.
7 As it was already mentioned by John, we're not
8 the traditional insurance company with
9 shareholders. We're not every quarter, you know,
10 looking in a soft market to rush in and grab a
11 bunch of premiums, or in a hard market, to
12 abandon. Our goal as a company is to keep a
13 stable and affordable insurance market that will
14 allow people to continue to deliver important
15 services to the children and other needy people
16 they're serving. So that is our focus.

17 As mentioned already today so well by
18 Representative Klunk and other people,
19 unfortunately, in the past few years, the market
20 has become a crisis in Pennsylvania. And that
21 crisis has not spared well-run organizations that
22 have good claims histories. There is a knee-jerk
23 reaction from commercial insurers to get out of
24 the market. And there is no options, really, for
25 these folks at that point.

1 Now, we are a steward of all the
2 non-profits that are member owners. And we can't
3 just blindly insure. We have to do good
4 underwriting. We have to protect the economic
5 future of all the non-profits that have worked
6 together to create what we are. But as, you
7 know, we are committed to staying in markets as
8 long as those markets are underwrite-able. We
9 are not a company that's going to have a
10 knee-jerk reaction based on a change in laws. We
11 have top actuarial work done. And we, you know,
12 we stay in the market if we ever in any way can.

13 As mentioned by Terry and John, these
14 organizations have been left with these terrible
15 alternatives. And so what we're trying to do is
16 create a healthy market for this to work in. And
17 I think we are committed to doing that, just like
18 Terry's groups are committed to providing the
19 good quality of service.

20 Now, what has caused the issue?

21 There's been a number of factors that
22 caused the crisis in the market there. We're not
23 going to take all the time today to go over all
24 those factors. What I want to do today is focus
25 on the one factor that we know is there that we

1 have a bill before this -- the House there today
2 that can be a significant, a very important
3 factor to helping keep this market viable, and
4 that is making sure that there's a connection
5 between when a harm is caused, is the economic
6 consequences for that harm tied to the cause of
7 the harm?

8 If it is, then this becomes an
9 underwrite-able risk, and then companies can stay
10 in the market. The other benefit that I want to
11 talk about today though -- and I look forward to
12 engaging with members on this -- when you tie the
13 economic harm to the cause, you have a negative
14 feedback loop. Not only does it make it
15 underwrite-able -- and that's important for
16 insurance companies, but it also ties the
17 feedback to the cause of the harm.

18 what does that allow?

19 when economic harm is tied to the cause
20 of the harm, organizations respond. So whoever
21 is engaged in a practice that's causing harm to
22 kids, that's generating economic liability, that
23 organization will have that negative feedback and
24 will change their behavior.

25 Does that mean, you know retraining?

1 Does that mean properly resourcing? Does that
2 mean letting employees go? Does that mean, you
3 know, loss control training, background checks?

4 There's a lot of things that can occur.
5 Once that harm and that economic outcome has been
6 tied back to the cause of it, there's all kinds
7 of things. And our organization specializes in
8 loss control and training and background checks
9 and those things. We go to great lengths to try
10 to identify how an organization can be improved
11 to stop something that's happened in the past
12 from happening again.

13 We cannot go on doing that forever. The
14 traditional insurance companies will very quickly
15 abandon somebody, and as mentioned today,
16 sometimes without even a claim if they're in a
17 space where that indicates that there might be
18 further problems in that space. They just run
19 out of the space. We are very different as a
20 non-profit. We are trying to keep ourselves in
21 the market and trying to keep providing. We
22 cannot do that if there is not that connection
23 between the cause of the harm and the economic
24 consequences. Because when that happens, we
25 don't know what -- how to underwrite a risk.

1 If we are ensuring against harms done by
2 somebody other than the organization, and the
3 organization that we're insuring doesn't have
4 control over things, we cannot work with them in
5 a way to manage that risk. The result being that
6 we would have to get out of a market. And
7 typically, we are very reluctant to do that, but
8 if we have to, we will.

9 The proposed bill will solve this
10 problem. This part of the crisis will be solved
11 by this bill because what it will do is it will
12 say -- it will not tell organizations what they
13 have to put in their contracts. We've got
14 national experience over decades, and we know
15 that's impossible.

16 But what it will do is say -- as
17 summarized very well by Terry and Representative
18 Klunk -- it will say, of course, if we are --
19 have a member and our member signs a contract
20 with the State, they're going to indemnify the
21 State for things the member does that are wrong.
22 That's completely understandable. And we
23 understand that people need freedom to negotiate
24 contracts. And so this bill does not try and say
25 what the contract can and can't say. But what it

1 does say is that the non-profit who's delivering
2 these services is not going to be in a position
3 where if the state is a contributor, that the
4 state has some negligence. They have gross
5 negligence, you know, whatever the contribution
6 of the state is there, that that can't be
7 transferred to the non-profit by obligation of
8 the contract, that each party is going to take
9 responsibility for what they've caused.

10 If we have that in place, that makes this
11 an insurable risk. Then based on the other
12 factors, the law, historical behavior, we can
13 figure out what is the right premium to charge
14 for that and we can insure that risk, not only
15 the risk of insuring our members, but insuring
16 and indemnifying the state in cases they get sued
17 if our member was the cause of the problem.

18 We are absolutely standing by our ability
19 and willingness to do that if the connection is
20 made, if that negative feedback loop is there.
21 And so really this bill, 2214, is about
22 accountability and connecting that loop so that
23 we will make sure that responsibility is there.
24 Now, the benefit of this -- and we've seen this,
25 you know, over decades of experience on a

1 national level -- is once that connection is
2 made, not only do you tie it back and there's a
3 behavior change, the total amount of harm in the
4 system goes down because you've not got a
5 connection. And so organizations will naturally
6 want to be accountable and find out, oh my gosh,
7 we have a policy or procedure that's allowing
8 kids to be harmed and that's causing great
9 economic consequences. We're going to do
10 something about that.

11 Additionally, identifying people who are
12 just not appropriate for a role -- and maybe they
13 need to be trained, maybe they need to find
14 another role, you know, all of those things will
15 come out of this process of making this
16 connection. In contrast to the fact that if
17 you've got one person paying for a harm caused by
18 another, not only is it uninsurable, but you end
19 up with no negative feedback loop, and a greater
20 amount of harm throughout the system just
21 continues.

22 And so, in conclusion, I would just say
23 I'm delighted to hear everything I've heard this
24 morning. Representative Klunk and the other
25 members who introduced the witnesses today and

1 the other witnesses that there's a real
2 comprehension of the problem and of how
3 legislation can change this and make it better,
4 not only to make it more economically
5 supportable, but to actually reduce the amount of
6 harm that's occurring to kids, which of course,
7 will have a great economic outcome, allow for
8 more of the research to be focused on services,
9 on the training of people who are providing the
10 services, and the other aspects of the system.

11 And so with that, I want to thank the
12 members for allowing me to do this initial talk.
13 And I want to be available for questions at this
14 point.

15 Thank you very much.

16 MAJORITY CHAIRWOMAN DELOZIER: Thank you
17 all for your testimony.

18 I have a few quick questions. And I know
19 Chairwoman Delissio does, as well, and a few of
20 our members.

21 But real quick, I know when we were
22 talking, and as you mentioned about who you
23 insure -- Mr. Clark, how many of your members
24 actually are non-profit?

25 MR. CLARK: We have about four that are

1 actually for-profit, but --

2 MAJORITY CHAIRWOMAN DELOZIER: Okay.

3 MR. CLARK: -- everybody else is
4 non-profit.

5 MAJORITY CHAIRWOMAN DELOZIER: Out of how
6 many?

7 MR. CLARK: Out of approximately 100
8 members.

9 MAJORITY CHAIRWOMAN DELOZIER: Okay. So
10 the majority of those that are doing these
11 services are doing it on a non-profit basis.

12 MR. CLARK: That's correct.

13 MAJORITY CHAIRWOMAN DELOZIER: So they're
14 not trying to not pay liability to earn more
15 money.

16 MR. CLARK: That's correct.

17 MAJORITY CHAIRWOMAN DELOZIER: They're
18 simply just trying to stay open.

19 MR. CLARK: Correct.

20 MAJORITY CHAIRWOMAN DELOZIER: Okay.
21 With the ability to do that, so how many of the
22 counties have these clauses within their
23 contracts?

24 MR. CLARK: I'm looking at Chris.

25 MR. REED: This is Chris Reed.

1 MR. CLARK: Go ahead, Chris.

2 MR. REED: Yeah, this is Chris from The
3 Nonprofits Insurance Alliance Group.

4 MAJORITY CHAIRWOMAN DELOZIER: Okay.

5 MR. REED: Clearly, we don't have every
6 contract from every county. We have looked at
7 over 40 contracts from counties in the State of
8 Pennsylvania. And the majority of them have
9 language where this would -- where this solution,
10 2214, would help solve that problem.

11 And the reason I'm giving you the answer
12 of the majority of them have is because there's
13 over 20 different ways the indemnification clause
14 is worded because all of these are individually
15 negotiated. But I would say, you know, way over
16 50 percent of them are leaving the non-profit
17 open to needing to indemnify the county even for
18 things the non-profit didn't cause.

19 So hopefully that answers the question.
20 Thank you.

21 MAJORITY CHAIRWOMAN DELOZIER: Okay.
22 Thank you.

23 And with the fact that some do have the
24 clause and some don't, and we want the HB 214 or
25 2214 to fix that --

1 MR. CLARK: Yeah.

2 MAJORITY CHAIRWOMAN DELOZIER: -- is
3 there a difference in the insurance rates? If
4 they -- with or without this clause, I would
5 imagine that would affect the cost of the
6 insurance. Does it or does it not?

7 MR. REED: If we are even aware of that
8 -- so it's not a requirement that every single
9 contract is given. And we have so many members
10 and so many contracts that we can't review every
11 single contract because I'm a lawyer, but I'm not
12 their lawyer. And so, you know, we provide
13 education and training and loss control services.
14 We try and educate them, but you can imagine,
15 many non-profits -- and I'm not knocking these
16 organizations -- but they're not that
17 sophisticated. And there's a huge amount of
18 leverage that the state and counties have, that
19 like you want this business, you'll take what we
20 slide in front of you.

21 So I would say, again, way over half of
22 the ones we look at, we're advising them about
23 it, and we see it, if it comes before them, you
24 know, sign the deal. But many times, they'll
25 come back to us and say, we have no choice, this

1 is what they told us. We can either take it or
2 leave it. And yes, we try to underwrite
3 according to risk, but the truth is that as of
4 right now, I would say that, you know, some of
5 that risk is being transferred, and it's hard for
6 us to get out in front of every one of those.

7 MAJORITY CHAIRWOMAN DELOZIER: Okay. All
8 right. Thank you.

9 I have some more questions, but I'll pass
10 it along to Chairman Delissio.

11 MINORITY CHAIRWOMAN DELISSIO: Thank you.

12 For the not-profit versus for-profit, the
13 language in the legislation is explicit for
14 not-for-profits. I'm curious as to the reason
15 for that because if I kind of remember my days
16 back when, it's how an entity chooses to
17 incorporate. And then if, in fact, they want a
18 501(c)(3) status, they apply to the IRS for
19 consideration because they have a mission
20 orientation, purely public charity.

21 So you know, both entities, for-profit
22 and not-for-profit, can make as much money as
23 they can or want. It's what, at the end of the
24 day, that excess revenue over expenses, you know,
25 does it go to someone, you know, personally,

1 privately, versus the intent is to go back to the
2 mission. But I've seen not-for-profits with
3 501(c)(3)s have seven figure CEO salaries.

4 So I'm just curious to follow this
5 not-for-profit versus for-profit and how this, in
6 fact, either enhances the legislation or what the
7 reason was behind that.

8 MR. CLARK: I'm hoping one of my
9 colleagues can answer that.

10 MR. REED: Well, I certainly would just
11 say the Chair is exactly correct about kind of,
12 you know, what can be done in the, you know, the
13 difference between a corporation and the choice
14 and who gets enriched, you know. So those things
15 are absolutely correct.

16 I would say that we expect that our goal
17 as a non-profit is mission-driven and we're
18 GuideStar, very transparent, 990 filing,
19 organization that's trying to create a result.
20 And I, you know, can't speak to every non-profit,
21 but I would say I do think there is the
22 difference mentioned by the Chair that when, in
23 the case where shareholders are taking, you know,
24 money out of something versus in the case where
25 they aren't, there's more money left to do

1 something with.

2 Now, could that money left go to a highly
3 paid executive instead of shareholders? In
4 theory, I think that can and probably in practice
5 does happen. I think, you know, the logic behind
6 this bill was to say, at least in the case of
7 non-profits, we're going to not be enriching
8 shareholders through that mechanism, but you
9 know, I think everything said by the Chair is
10 exactly accurate and that that should be taken
11 into consideration when balancing, you know, the
12 good and bad of making a decision about the
13 language of the bill.

14 MINORITY CHAIRWOMAN DELISSIO: I
15 appreciate that, Mr. Read.

16 And a second question, the revisor
17 statutes in 38 states --

18 MR. REED: Sure.

19 MINORITY CHAIRWOMAN DELISSIO:
20 Pennsylvania is not one of those states; is that
21 correct?

22 MR. EHRESMAN: They don't have the --
23 they don't have the retroactive aspect of the
24 revisor statute, but they have the prospective
25 where you can -- you can bring civil litigation

1 until age 55. And it's a little more complicated
2 than that, but the revivor piece, where in other
3 states, like bordering states like Pennsylvania,
4 New York, New Jersey, for example, opened up a
5 two-year window, where previously time-barred
6 lawsuits could be brought forward -- brought
7 forth.

8 New York, the windows are closing there.
9 Nine thousand lawsuits occurred in New York. And
10 quite a few happened in New Jersey. And I don't
11 have that quantified yet, but there's --

12 MINORITY CHAIRWOMAN DELISSIO: And I know
13 the legislation is pending in PA for that, your
14 two-year window, as well. So but I just wanted
15 to be clear for those that may not have followed
16 this discussion as closely, that it doesn't exist
17 at this time for that. And I think that may be
18 all of my questions at this time.

19 Like yourself, I have a few others, but
20 we'll defer to other members of the Committee.

21 MAJORITY CHAIRWOMAN DELOZIER: We have
22 lots of other panels we can, you know --

23 with that, I'll hand it over to
24 Representative Stephens, who had a question.

25 REPRESENTATIVE STEPHENS: Thank you.

1 Thank you for the testimony. It was very
2 -- very, very helpful. Mr. Reed, I just -- I
3 thought your testimony was really informative and
4 I just want to make sure that I understand it
5 correctly.

6 By tying the cause of the harm to the
7 economic consequences, in essence, what you
8 believe is by having each party bear the full
9 burden of the liability better protects children
10 because it would eliminate bad actors or force
11 those bad actors to improve their practices,
12 which would result in better care for the kids.
13 Is that a fair summation of your position?

14 MR. REED: That is exactly correct and
15 what we've seen in practice over decades of
16 underwriting.

17 REPRESENTATIVE STEPHENS: Okay. So I
18 know that our hearing today is on two bills. One
19 is about the indemnification provisions. And I'm
20 actually working -- I agree with you on all of
21 those points. I actually have a bill regarding
22 indemnification and construction contracts. So
23 I'm well-versed in this area now.

24 The other bill, though, that would really
25 impose caps on liability, that runs counter to

1 what you were suggesting earlier, right, where
2 now all of a sudden entities would not be bearing
3 the responsibility of their actions; am I right
4 then in that regard?

5 MR. REED: I would say that it can -- I
6 would say it's more -- or independent rather than
7 counter to, but I would say that it certainly
8 doesn't do this tying back and creating a
9 negative feedback loop. I think, you know, the
10 caps bill would create more capacity in the
11 market and it would bring other people in and
12 make the market more competitive.

13 It does not have the virtue, though, of
14 tying responsibility back to the cause of it. It
15 lacks that completely. I would agree with that.

16 REPRESENTATIVE STEPHENS: And that --

17 MR. REED: Does that answer the question?

18 REPRESENTATIVE STEPHENS: Yes.

19 MR. REED: Okay.

20 REPRESENTATIVE STEPHENS: But the benefit
21 of that, the benefit of tying the economic
22 consequences to the harm, is to better protect
23 the children, right? I mean, that's the --

24 MR. REED: Absolutely.

25 REPRESENTATIVE STEPHENS: -- net result.

1 MR. REED: And the 2213 doesn't do that.
2 I agree with you entirely, and that is a fact.

3 REPRESENTATIVE STEPHENS: All right.
4 Thank you very much.

5 MAJORITY CHAIRWOMAN DELOZIER:
6 Representative Thomas.

7 REPRESENTATIVE THOMAS: Real, real quick.
8 And Chris, I think this is for you.

9 Is there another state that was in a
10 similar situation and passed legislation so that
11 we could look to them for results?

12 MR. REED: That's a -- that's a great
13 question.

14 So we are working on legislation in a
15 number of other states. This legislation was
16 modelled on construction laws, which were just
17 mentioned by the prior member, Mr. Stephens, I
18 think his name was. And then in California,
19 actually though, there was a bill to protect
20 non-profits that was passed, very closely related
21 to this.

22 That was for all small non-profits that
23 were using schools. The school districts were
24 then saying to the non-profit, anything that
25 happens while you're using the building, you'll

1 pay for. Even if it turns out it's a rusty
2 bracket and a fire sprinkler fell and it hit
3 somebody in the head, you're going to be
4 responsible because you were using the building
5 and it arose out of your use of the building,
6 even though it was negligence of our maintenance
7 of the building.

8 So schools were just, you know, hitting
9 small and medium non-profits, that were people
10 serving organizations, with these things. And
11 once this bill was passed, that behavior was
12 changed.

13 Now, we underwrite all kinds of
14 non-profits that use schools and are
15 people-serving, child-serving organizations. And
16 so you know, we have data from California that is
17 significant on the change of behavior that that
18 caused and the amount that that reduced the harm.

19 REPRESENTATIVE THOMAS: Okay. That's
20 helpful.

21 I just -- I think in this area of abuse,
22 particularly with what we've had specifically
23 here in Pennsylvania, which Jerry Sandusky,
24 people are very sensitive.

25 I'm fully aligned with the person that

1 causes the harm, or had policies that contributed
2 to causing the harm, should be the person
3 responsible.

4 MR. REED: Yes.

5 REPRESENTATIVE THOMAS: But when we talk
6 about limitation or adjusting that, we just have
7 to make sure we're balancing with something that
8 every one of you has said, and that is if someone
9 causes harm, they need to be held accountable,
10 so --

11 MR. REED: I'd mention one other -- if I
12 may, excuse me -- another point I would make is
13 California has a law that says if the first
14 person in the door is going to bankrupt kind of
15 the whole system, then we're going to look at the
16 award for that person. And this is kind of a
17 broader one, not tied to construction or tied to
18 non-profits with schools.

19 And I think I am so committed to
20 protecting kids and reducing harm. And I'm so
21 committed to those kids, after the fact, that
22 have unfortunately have had something happen to
23 them, to give them resources to get their life
24 back on track and have a recovery that allows
25 that to -- them to make a change and to get a

1 better result.

2 And I think thinking of that as a pure
3 dollar amount, you know, a lot of the solutions
4 in that kind of after something has already
5 happened area, those solutions need to be funded
6 and there needs to be recovery there. But the
7 really hard problem at that point is not so much
8 writing a check and creating a recovery.

9 The really hard problem at that point is
10 how do you take a kid that's had that much stuff
11 done to make their life hard and given that many
12 disadvantages and to turn that money into a glide
13 path to a successful life to contributing to
14 society and becoming, you know, a productive
15 person. And to me, you know, the idea of saying
16 we can put a dollar on that and that that is the
17 end of the solution to the problem is an
18 oversimplification of the difficulty of the
19 problem. It's a very hard problem.

20 REPRESENTATIVE THOMAS: Thank you.

21 MAJORITY CHAIRWOMAN DELOZIER: Okay.
22 Thank you very much. I appreciate the
23 information from the panel. That ends our
24 questions. Thank you for your time and thank you
25 for your time from California, as well. And

1 hopefully you don't have to get up as early
2 tomorrow.

3 MR. REED: Thank you.

4 MAJORITY CHAIRWOMAN DELOZIER: So with
5 that, thank you both for your time.

6 MR. CLARK: Thank you.

7 MR. EHRESMAN: Thank you.

8 MAJORITY CHAIRWOMAN DELOZIER: Next, we
9 have Mr. Nadeem Bezar from the law firm of Kline
10 & Specter. And he is here today representing The
11 Pennsylvania Association for Justice, or as it is
12 more commonly known, the Trial Bar Association.
13 And we will have his testimony and then
14 questions.

15 Thank you, sir.

16 MR. BEZAR: (Inaudible.)

17 Now it looks like it's on. Thank you.

18 Madam Chairperson, Madam Chairperson, and
19 members of the Committee, I thank you for this
20 opportunity to present testimony today. My name
21 is Nadeem Bezar and I'm an attorney with Kline &
22 Specter. I'm also a member of the Pennsylvania
23 Association of Justice. And I'm speaking here
24 today, not just on behalf of my firm, the
25 Pennsylvania Association of Justice, but on

1 behalf of the unmentioned, unmentioned victims
2 who are not in the room physically.

3 I've been an attorney for the past 30
4 years, with the last 10 years a primary focus
5 committed to the representation of victims of
6 physical and sexual assault. With this type of
7 focus, I have had the benefit of having other
8 outside firm activities that I've engaged in.
9 Presently, I'm an adjunct professor at the
10 University of Pennsylvania, Carey School of Law,
11 and at Temple University's Beasley School of Law,
12 where I teach the first of its kind course
13 entitled Child Abuse and Sex Trafficking of
14 Minors.

15 In addition, I'm engaged in several board
16 activities, all with a focus on child welfare.
17 I'm a member of the Public Interest Law Center.
18 I'm a board member of Community Legal Services of
19 Philadelphia. I'm a board member of Villanova
20 University's Commercial Sexual Exploitation
21 Institute, which focuses on policies surrounding
22 victimized children and adults in human
23 trafficking settings.

24 I'm a member of the field center for
25 children's policy, practice, and research at the

1 University of Pennsylvania. I sit on
2 Philadelphia City Council's task force for
3 evaluating family separation. That is the taking
4 of children out of their homes where they exist
5 with family members, either parents or kin, and
6 placing them in alternative placement settings.
7 And that's what we're referring to or speaking
8 about today, alternative placement settings.

9 I am co-chair also of the Pennsylvania
10 Association for Justice's Survivors of Abuse
11 Committee. In addition to those activities
12 outside my practice, I work with colleagues at
13 Kline & Specter, where I represent close to 100
14 children who have been demoralized, brutalized,
15 and at times murdered because of the physical
16 harms perpetuated by those entrusted to protect
17 them.

18 Think about that, not the homes that they
19 reside in where they were initially harmed, but
20 the homes where they were placed where they were
21 supposed to be afforded protections from those
22 initial harms. At times, those children have
23 been brutalized so badly they will not recover,
24 likely not recover, for the rest of their lives.

25 For the purposes of today's discussion,

1 we take no position on HB 2214. And I will limit
2 my remarks exclusively with regard to HB 2213.

3 Madam Chairpersons and members of this
4 Committee, this bill seeks to undermine the
5 rights of children receiving child welfare
6 services. This bill compromises the rights of
7 the abused. Actually, it's worse. This bill
8 compromises the rights of abused children.

9 I've heard discussion this morning for
10 near 45 minutes referring to actuarial
11 calculations, insurance companies in the market,
12 the cost of insurance, and the members of various
13 committees that have attempted to bring to this
14 Committee's attention how there's an insurance
15 crisis. What we have not heard are from the
16 voices of the victims of this abuse. We cannot
17 nor should not consider compromising the rights
18 of abused children on any level.

19 HB 2213 calls for a limitation on damages
20 for entities that provide foster care, adoption,
21 residential treatment, and other placement
22 services. Specifically, HB 2213 caps damages for
23 non-profit organizations. And I think there was
24 a reference to the near-100 organizations
25 represented by Mr. Clark, that nearly 100 of them

1 were non-profit. So we're talking about capping
2 damages, limiting damages and recoveries to
3 abused children to most of the service providers
4 in the State or Commonwealth of Pennsylvania.

5 Essentially, the bill reduces the
6 compensation that an injured child can receive
7 from a jury award after being harmed, abused, or
8 even killed while receiving care from entities
9 that provide foster care, adoption services,
10 residential care or treatment at a residential
11 facility, but limitation on damages is \$500,000.

12 I want to, for a moment -- and I'm happy
13 to answer questions at the end -- focus on the
14 economic calamity that would result in limitation
15 of damages to \$500,000. This isn't a return to
16 the ability of social service agencies if they
17 are paying less premiums and their ability to
18 hire further staff members.

19 A limitation on damages of \$500,000 would
20 cause the taxpayers to bear the burden of taking
21 care of these children with a lifetime of
22 injuries and harms, some of which that I will
23 discuss today. It is a burden upon state
24 agencies, such as the Department of Public
25 welfare that typically fund -- that typically

1 fund the harms or the costs, to cure the harms or
2 treat the harms that these children have
3 received. That lien that would remain
4 outstanding would have to be severely or
5 drastically compromised as the cost of taking
6 care of these children sometimes exceeds hundreds
7 of thousands of dollars, upwards -- up towards a
8 million dollars.

9 But more importantly, I wanted to speak
10 -- I wanted this Committee to understand whose
11 rights we are actually limiting. So for a
12 moment, let's talk about the types of harms,
13 keeping in mind that these are actual -- actual
14 people who I will introduce you to who have
15 suffered these types of harms. This bill would
16 limit their ability to recover costs.

17 And as, I believe it was John or Chris
18 Reed rather, who referenced that the finances are
19 not the cure-all is absolutely correct. The
20 finances are the start of curing the problem.
21 These services cost money. A child who's been
22 debilitated, who needs physical health treatment,
23 mental health treatment, all types of treatment,
24 needs money in the future to get that treatment.
25 If it is not the perpetuator of that harm, the

1 personal responsible for that harm, then it
2 becomes the burden of taxpayers across the
3 Commonwealth.

4 Now, to introduce you to a few of the
5 children. Elliot. Elliot suffered shaken baby
6 syndrome so badly he nearly died and he has a
7 permanent brain injury. He will require a
8 lifetime of care.

9 Adeen. Adeen was submerged in boiling
10 hot water until his skin came off or free from
11 his body. He is disfigured for the rest of his
12 life and will require a countless number of
13 surgeries in order to repair that.

14 Samaya. Samaya was held down and burned
15 with an iron such that her skin has contracted so
16 badly she has difficulties walking and will
17 require surgeries also to repair that skin.

18 Zaya, perhaps the saddest story amongst
19 all of them, was a child that was being used to
20 train attack dogs in a foster home, a foster home
21 that was monitored by one of these agencies.

22 Juliet and Gia were murdered while under
23 care in homes that were supposed to be supervised
24 by these agencies.

25 Nevaeh and Tyree were denied medical

1 treatment so bad at a young age that they suffer
2 with developmental delays, delays that will
3 require occupational therapy, physical therapy,
4 and other therapies to allow them to become
5 productive members of society. Therapies that
6 will cost well beyond \$500,000, and costs that
7 will become the burden of taxpayers.

8 Troy. Troy is a child that had been
9 starved to near death, resulting in his own
10 developmental delays.

11 And Julio, a child who was suffocated to
12 death. These are -- these are the people that we
13 should be talking about, these victims, these
14 people that will be further marginalized --
15 further marginalized if 2213 is considered and
16 becomes effective. These are not hypotheticals,
17 but these are actual cases that we are working on
18 and have worked on at Kline & Specter.

19 Finally, so this Committee understands
20 that I'm not testifying in a vacuum or based on
21 hypotheticals, I want to reintroduce you to Zaya.
22 Zaya is a child that became part of the child
23 welfare system. She was to be supervised by two
24 separate child welfare agencies. Neither of the
25 child welfare agencies, despite knowing of her

1 existence, ever visited her, ever did a follow-up
2 on her.

3 Zaya was ultimately murdered in foster
4 care at a home that was receiving foster care
5 services itself, child welfare services itself.
6 The community umbrella agency was well aware that
7 this child existed in the home. Now, the
8 interesting point to Zaya, which really
9 challenges -- which really challenges the bill on
10 its surface is how have we decided to distinguish
11 between physical and sexual harm?

12 who has decided that a cap is appropriate
13 on a physical harm, no matter how grave it is?
14 who has decided that a cap is inappropriate --
15 and I don't mean to sell short -- but how modest
16 a sexual assault might be?

17 Think about the random nature of the
18 presentation of 2213. So a child that's been
19 physically crippled for his or her entire life is
20 limited to a \$500,000 recovery. Zaya, before she
21 was murdered, lived in a home where she was used
22 as a dummy for an attack dog. Zaya, at autopsy,
23 had nearly 100 healed cigarette burns. Zaya had
24 signs of broken bones. Zaya's face was so
25 disfigured that the pathologist asked for her

1 birth records so he could understand who treated
2 her cleft palate, only to find out that she was
3 not born with a cleft pallet, but that the
4 service provider, the foster care provider,
5 performed home surgeries on Zaya.

6 Zaya lived in a home with a sexual
7 predator, another reason to have her removed from
8 the home. The point being, because of the nature
9 of Zaya's -- the end of Zaya's life, we will not
10 know if she was abused sexually as well as
11 physically. Because of the nature of the initial
12 investigation, we will not know if she was abused
13 sexually and physically. Yet this random cap
14 limits her recovery, whether she was abused
15 sexually, and how brutally she was abused
16 physically, to \$500,000.

17 We cannot, nor should anyone consider
18 compromising the rights of abused children. I
19 don't think we could say that enough. With some
20 of the time that I have left, I thought in going
21 second sometimes or third sometimes has its
22 advantages. I thought I might reference some of
23 the points made by the prior speakers, and I am
24 sure that there will be questions that I'm happy
25 to entertain.

1 First, we are unaware, and nor do we
2 concede that there is an insurance crisis, or an
3 insurance crisis with the respect of insuring
4 social welfare agencies. In my practice, as part
5 of the discovery proceedings, we receive
6 insurance policies and we are able to identify
7 the coverage available. We have not seen a
8 downtrend, one, in coverage available. And two,
9 we have not seen a drastic uptick in the premiums
10 that are applied to such coverage. Certainly, we
11 have not seen the increase or this one-to-one,
12 dollar-for-dollar coverage or a \$50,000 SUV from
13 Lloyd's of London.

14 We have seen other insurance companies
15 enter into this space, and I'm happy to name
16 them: Nationwide, Scottsdale, Philadelphia
17 Indemnity, Beazley, Crum, and Lloyd's of London
18 on a very limited basis. We have seen -- or I
19 have seen in my own experience, understanding
20 that it's anecdotal and only relates to perhaps
21 100 cases, the difference -- the disappearance.
22 A&I insured an agency that was referenced by
23 Terry Clark.

24 That agency was called Wordsworth
25 Academy. Wordsworth Academy is no longer in

1 business and did go bankrupt. Wordsworth Academy
2 did not go bankrupt because of payments of
3 insurance proceeds or their inability to satisfy
4 civil litigation claims. And for those of you
5 who do not recall Wordsworth Academy, it was a
6 Philadelphia-run residential treatment facility
7 where David Hess, a young boy of 17 years old was
8 held down by staff members. And actually prior
9 to George Floyd, the phrase "I cannot breathe"
10 was coined there.

11 A 17-year-old boy, held down by
12 untrained, unsupervised staffing members who had
13 previous history of being difficult with
14 children, held him down until he passed out,
15 suffocated, and died. And the compensation for
16 that claim was not something that would shock the
17 conscious. There has been a trend in recognizing
18 the rights of these marginalized citizens of our
19 Commonwealth. And that trend has caused -- has
20 caused advocates like myself and others across
21 the state to represent these children.

22 I cannot imagine there's anyone here who
23 thinks that these children don't have a right to
24 seek justice. And with that trend, there have
25 been more claims. Claims that have been handled.

1 Claims that need to be litigated, both on
2 liability and causation, even before we get to
3 the damages issue. The legislation is not good.

4 It does not solve any problems. It
5 passes on the financial burden from the people
6 that harmed these already marginalized citizens
7 of our State to the taxpayers of our State, to
8 the Department of Public Welfare who will pay for
9 their treatment, to Medicare, and to those who
10 are unfortunately required to take care of these
11 harmed children for the rest of their lives.

12 Do not consider moving forward on this
13 legislation. It will not -- it will not change
14 -- it will not change the model of child welfare.
15 And with that, I'm available to answer any
16 questions.

17 MAJORITY CHAIRWOMAN DELOZIER: Okay.
18 Thank you very much for your testimony.

19 And I think I -- just to start, can speak
20 for probably everybody sitting up here and those
21 that have had to leave, we're on the Children and
22 Youth Committee for a reason, in public policy,
23 to keep children safe. So the issue of balancing
24 policy as to the fact of a lot of -- when this
25 bill comes forward, it's not about availability.

1 And I'm sure the companies you may have mentioned
2 are in the space of insurance. Part of the
3 debate is the cost of that insurance and what
4 those companies have to -- they may very well
5 have plans, but they're so insurmountable for a
6 particular agency in order to buy insurance that
7 they can no longer stay in the space.

8 So we want our children safe and we also
9 want our entities to stay in business so that
10 they can provide services to the rest of the
11 children that were not on the list that you
12 mentioned that were harmed because the cases that
13 you mentioned are egregious and horrific across
14 the board. No one will even argue that fact.

15 And personally, there's a place down
16 below for all those that committed all of those
17 crimes against those children. And I think we
18 need to protect those children 1,000 percent. So
19 I agree with you 1,000 percent in that regard.
20 What was done to those children is horrific.

21 What I want to ask you about is dealing
22 with the fact that with all of the cases that
23 you've had -- and you've been able to prosecute
24 many, many cases -- with the long-term care of
25 children, and when the cases have gone to a

1 settlement, what has -- in your perspective, what
2 have been the case settlements?

3 Have they been appropriate? What is like
4 a large settlement versus a small settlement for
5 long-term care for a child?

6 MR. BEZAR: Madam Chairperson, first,
7 thank you for your remarks and for your obvious
8 concern for what we're talking about here today,
9 and that is the safety and welfare of the
10 children.

11 In terms of settlements, the settlements
12 have had and held wide ranges.

13 MAJORITY CHAIRWOMAN DELOZIER: Sure.

14 MR. BEZAR: They've been anywhere from
15 less than the \$500,000 proposed cap. Those are
16 children that have been harmed, that have limited
17 ongoing medical needs --

18 MAJORITY CHAIRWOMAN DELOZIER: Okay.

19 MR. BEZAR: -- physical medical needs,
20 may have some limited ongoing psychological needs
21 or care, and settlements have been quite large.
22 Again, I don't think there's anybody in this room
23 that would consider any settlement for the harms
24 that these children obtained worthwhile -- in the
25 sort of air quotes, make it worthwhile.

1 MAJORITY CHAIRWOMAN DELOZIER: Right.

2 MR. BEZAR: Those settlements have had
3 values that have had the ability, one, to be put
4 in trusts so that the money is put aside and kept
5 safely for these children to provide medical
6 services that they might need in the future. And
7 those settlements can extend to several millions
8 of dollars.

9 MAJORITY CHAIRWOMAN DELOZIER: Okay. And
10 when something is broken down, obviously the
11 child -- and I'm trying to understand. So when a
12 settlement is happening, a child receives a
13 certain amount of money, obviously, there's legal
14 costs. How is that broken down?

15 So is the child -- what other costs? And
16 I'm trying to understand the legal settlement.

17 MR. BEZAR: Sure.

18 MAJORITY CHAIRWOMAN DELOZIER: So there's
19 different types of costs. What are those costs
20 that come out of?

21 So if we say \$500,000, like you're saying
22 that's not enough. That is not going to cover
23 what it is that's necessary because there's
24 different parts of it. That \$500,000 doesn't all
25 go to the child for services. There's going to

1 be a need for more is what you're saying,
2 correct?

3 MR. BEZAR: Any settlement wouldn't go
4 just to the child --

5 MAJORITY CHAIRWOMAN DELOZIER: Right.

6 MR. BEZAR: -- for the experience.

7 MAJORITY CHAIRWOMAN DELOZIER: So I'm
8 just trying -- what is that breakdown?

9 MR. BEZAR: Sure.

10 MAJORITY CHAIRWOMAN DELOZIER: What would
11 that --

12 MR. BEZAR: Well, it's going to depend on
13 the individual child --

14 MAJORITY CHAIRWOMAN DELOZIER: Okay.

15 MR. BEZAR: -- and on their individual
16 needs.

17 MAJORITY CHAIRWOMAN DELOZIER: Okay. So
18 it's always different?

19 MR. BEZAR: It's absolutely always
20 different.

21 MAJORITY CHAIRWOMAN DELOZIER: Okay.

22 MR. BEZAR: But then they tend to
23 gravitate towards certain categories, right. So
24 if a child has grave or continuous physical
25 needs, then that would probably shift towards the

1 category of requiring greater amount of money for
2 future needs.

3 MAJORITY CHAIRWOMAN DELOZIER: Okay.

4 MR. BEZAR: A child that has limited
5 physical needs, right, because we all know that
6 there are needs that are more costly.

7 MAJORITY CHAIRWOMAN DELOZIER: Sure.

8 MR. BEZAR: Home care, particularly
9 costly. Continuous surgery, particularly costly.
10 The unknown of surgeries in the future,
11 particularly costly, whether they're plastic in
12 nature for burns over a child's entire body.
13 Keeping in mind -- keeping in mind that a one or
14 two-year-old that has suffered submerging burns,
15 one surgery might be 50 or \$100,000, but that
16 child's growing hopefully, growing every day and
17 will require, just to survive, continuous
18 surgeries, not just annually, but maybe twice a
19 year. That becomes costly.

20 will the child be able to walk with the
21 contractures that they suffer with after those
22 burns? Or were there also broken bones that are
23 going to cause developmental delays? And will
24 that child need something, even if it's not
25 orthopedic care with a premier orthopedic

1 company, but physical therapy, occupational
2 therapy?

3 How far will that child fall behind in
4 school now because he or she is at home lying in
5 bed healing from its last surgery?

6 They'll start school later. They won't
7 be able to attend school in the traditional sense
8 that we've all attended school, or we might have
9 attended school. So they become less educated.
10 They have to catch up. Perhaps home tutoring
11 makes sense for them. Perhaps they do catch up.
12 There's a wide continuum. The point being,
13 \$500,000, and what eventually ends up in the
14 child's trust, is just inadequate to take care of
15 that child. When we considered coming into the
16 equation, they were receiving services from the
17 State that are required to be reimbursed.

18 MAJORITY CHAIRWOMAN DELOZIER: And you
19 have not seen any of those that have left the
20 industry because of insurance?

21 MR. BEZAR: The only -- left the industry
22 altogether, I have not seen. The only insurer
23 that I have not seen recently in the last maybe
24 two years is a company camped A&I, which I
25 thought the speakers prior to me, Mr. Reed, was

1 affiliated with. But clearly, from his
2 testimony, he has not left the Commonwealth of
3 Pennsylvania. He's still in the Commonwealth of
4 Pennsylvania.

5 MAJORITY CHAIRWOMAN DELOZIER: Okay.

6 MR. BEZAR: And that's the only one
7 referred to. In fact, I've seen an increase in
8 the number of insurers that have started to
9 insure social service agencies. With specific
10 social service agencies that I've litigated with
11 over the last several years, there has been
12 evolving insurers that have stepped in, some
13 providing more coverage, more comprehensive
14 coverage, some providing less.

15 MAJORITY CHAIRWOMAN DELOZIER: At what
16 cost?

17 MR. BEZAR: There's some uptick in
18 premiums, but not anything that I've looked at
19 the policy and said, wow, they're going to have a
20 tough time maintaining. And I am mindful of that
21 situation because I am mindful of who I'm seeking
22 a recovery for. To the extent that there is an
23 obvious uptick, I imagine there are several
24 organizations that are willing to sit down to
25 deal with any -- to the extent that there is an

1 insurance crisis -- any insurance crisis and sit
2 down and try to work out a solution.

3 I think we're all in agreement that,
4 first, we must protect the children, and then we
5 figure out a way in order to do so.

6 MAJORITY CHAIRWOMAN DELOZIER: Okay.
7 well, thank you very much. I really appreciate
8 it.

9 And like I said, thank you for bringing a
10 little of it home to the fact of who those
11 victims are. I think that they need to be at the
12 forefront in making sure that we are balancing
13 policy with safety of our kids.

14 So with that, I will hand it over to
15 Representative Stephens.

16 REPRESENTATIVE STEPHENS: Thank you. And
17 thank you for all the work you're doing on behalf
18 of these abused children and holding their
19 abusers accountable.

20 One of the things I want to follow up on
21 from Representative Delozier's -- or I'm sorry,
22 Chairwoman Delozier's line of questioning is when
23 you recover -- when you get a judgment against an
24 abuser or, you know, an abusing agency, you
25 mentioned a little bit about the costs of care

1 for these children absent that judgment. So
2 these children obviously are in the foster care
3 system or are being cared for by some government
4 agency. And they're going to experience these
5 significant medical bills, these significant
6 ongoing treatment bills, things like that.

7 Absent a judgment against the abuser or
8 the agency who is responsible for the poor
9 practices that led to the abuse, who foots that
10 bill? Like who would foot the bill for these
11 kids absent this type of recovery?

12 MR. BEZAR: Sure. Thank you for the
13 question. And thank you for the comment about
14 the work.

15 First, I want to point out that there's
16 perhaps a misperception that once in care, always
17 in care. There are many success stories. I
18 imagine speakers that come after me and certainly
19 ones before me and others who are in the know in
20 the child welfare industry would tell you that
21 it's the ultimate goal to get children that are
22 receiving child welfare services back with their
23 families and/or kin. And there's actually
24 something called kinship care in the child
25 welfare system.

1 I think we should all be mindful that
2 that is the ultimate goal, provided those are
3 safe environments. I think it's important to
4 recognize that, because a child who is
5 horribly injured while in the child welfare
6 system and then is returned to their, for lack of
7 a better phrase, loved one, a parent, family
8 member, an uncle, an aunt or kin of some sort, is
9 now required to provide that care for that child.

10 The cost of that care can be
11 astronomical, both directly for the medical care
12 received, and indirectly, the time lost -- the
13 time lost by that care provider, who now stays
14 home with the child when he or she was just
15 barely able to make ends meet, like many of our
16 citizens across the Commonwealth. The cost of
17 that care, should it not come from a trust or a
18 settlement that has been established or a verdict
19 that has been spoken on by citizens of
20 Pennsylvania, comes from Medicare, comes from the
21 Department of Public Welfare or other insuring
22 agencies that would provide for the medical
23 treatment.

24 Those agencies might not be paid ever if
25 there is a cap of \$500,000. In other words, it

1 would be a city, state, or Federally-funded
2 agency or the taxpayers that would then be
3 floating or paying the bill.

4 REPRESENTATIVE STEPHENS: So that
5 contemplates the future needs of the child. In
6 terms of a child who is abused while in the
7 system, so some of the horrific examples you
8 provided where I would hope that a child went and
9 got medical care, you know, upon discovery of
10 these horrific burns or other severe injuries.
11 Those costs -- I presume that those children were
12 on some type of public -- some type of
13 publicly-funded insurance program, Medicaid or
14 Medicare.

15 So how does it work when you make a
16 recovery for those past medical expenses? How
17 does that work in terms of the judgment or the
18 amount of settlement that you might receive?

19 MR. BEZAR: During the course of the
20 litigation, we are compelled, those advocates who
21 represent these victimized children, are
22 compelled to stay in touch with the Department of
23 Public Welfare to receive updated medical
24 information, one, about what service providers
25 are providing services, and two, the costs of

1 those services, and three, what's the outstanding
2 bill for the cost of those services. It's that
3 third component, the outstanding bill, that
4 becomes what we call a lien. A DP -- at least
5 I've been referring to it for the last 30 years
6 of my career as a DPW lien, right. And that is
7 the -- with all due respect, the lien that makes
8 me bite my lower lip, that causes some concern.
9 That's always going to get in the way of simple
10 resolution because it is a bill or tax or burden
11 that my client will have to incur in resolving a
12 case.

13 So with a suggested limit of \$500,000 and
14 a child who has had submersion burns and had
15 medical procedures that might total a million
16 dollars, there's a reduced cost, right, because
17 it's the State that's paying for it. So the bill
18 might -- or the lien might be \$500,000. Now,
19 we're faced with balancing a \$500,000 limit with
20 a child's injuries, his or her future needs, and
21 a lien that is not going away, no matter how hard
22 I stamp my feet or hold my breath.

23 The lien can be reduced. The lien can be
24 worked with, but it is not going away. And at
25 times, the lienholder will take as much if not

1 more than the child that suffered the injury,
2 that suffered the surgeries, and that needs
3 similar type of care in the future, all creating
4 just a -- just a burden on the State system.

5 REPRESENTATIVE STEPHENS: So as it
6 relates to the past medical care that was
7 required as a result of this abuse, you have to
8 reimburse the State for the care that they funded
9 for that child out of the proceeds of this
10 settlement or verdict; is that correct?

11 MR. BEZAR: We have to reimburse the
12 State out of the proceeds of the settlement.

13 REPRESENTATIVE STEPHENS: Okay. All
14 right.

15 Thank you.

16 MAJORITY CHAIRWOMAN DELOZIER: Thanks for
17 the explanation.

18 Oh, I'm sorry. Chairman Delissio.

19 MINORITY CHAIRWOMAN DELISSIO: Thanks.
20 Just very quickly.

21 So I'm familiar with the concept of the
22 estate recovery as it pertains to Medicaid, for
23 instance, in skilled nursing facilities. So if
24 an individual is in a skilled nursing facility,
25 but owns their own house, but their house hasn't

1 been sold yet, et cetera, et cetera, and their
2 care is being paid for by Medicaid, when that
3 person is finished with that stay, however they
4 finish, the estate -- there is a lien against the
5 estate that needs to be satisfied from those
6 assets that the estate has.

7 You're saying that there is a similar
8 situation here in this universe where the
9 Department of Human Services -- we changed the
10 name about a half dozen years ago. I was
11 instrumental in working with Representative Murt
12 in making that happen -- is also placing a lien
13 against an amount recovered as a result of a
14 lawsuit?

15 MR. BEZAR: Madam Chairperson, the
16 initial explanation -- and I appreciate it -- the
17 initial explanation talking about nursing
18 services might not apply to children obviously.
19 But like that lien, like that lien, the
20 Department of Human Services places a lien on
21 recoveries, on claims made for abuse, yes.

22 MINORITY CHAIRWOMAN DELISSIO: Thank you.
23 Appreciate that clarification.

24 MAJORITY CHAIRWOMAN DELOZIER: Thank you.
25 Representative Mackenzie.

1 REPRESENTATIVE MACKENZIE: Yes. Please
2 forgive me for not understanding everything. I'm
3 new to the legislature.

4 But if a child or a victim is awarded the
5 \$500,000, and you're mentioning a trust, does
6 every one of those dollars go into a trust or are
7 some attorney fees taken out of that money or do
8 they get the full \$500,000?

9 MR. BEZAR: Well, the legislation,
10 written as it is, does not designate how that
11 \$500,000 is distributed, but there is an
12 attorney's fee associated with the representation
13 of victims. And so there is an attorney's fee,
14 keeping in mind that it's a minor or a minor's
15 compromise if it's a settlement, that has to be
16 approved by the courts around the Commonwealth.
17 There is an attorney's fee taken out that would
18 reduce the compensation received.

19 The balance of which -- the balance of
20 which also may become subject to the liens that
21 have been discussed for the last few minutes.
22 The residual amount, or the amount left over, is
23 an amount that is sometimes so small or sometimes
24 so modest in the order of several hundred
25 thousand dollars, oftentimes, trust companies

1 will not take that small amount. There's no
2 vehicle for that small amount.

3 So to your point, the amount actually
4 gets even smaller because inflation is not -- is
5 far exceeding the interest rate available to that
6 200, 300 or \$400,000. And it wouldn't be that
7 much if it was a \$500,000 recovery. So the
8 answer is the money is placed aside. There's no
9 access to it, unless there's medical needs, which
10 there would be. But at that small amount, a
11 trust wouldn't manage it. It would likely be
12 kept in a secured account and only invaded if
13 there were medical needs, which many of these
14 children have.

15 REPRESENTATIVE MACKENZIE: Thank you.

16 MAJORITY CHAIRWOMAN DELOZIER: Mr. Bezar,
17 thank you very much for your time. Appreciate
18 you coming up here and sharing your testimony
19 with us. We do have your full written testimony,
20 as well, but thank you for your time.

21 MR. BEZAR: Thank you. And thank you to
22 the members of the Committee.

23 MAJORITY CHAIRWOMAN DELOZIER: Our last
24 panel consists of two provider agencies, the
25 first from the eastern part of the State, and the

1 second from the west. Dr. William Vogler is the
2 CEO of Pinebrook Family Answers, with locations
3 in Northampton and Lehigh Counties. And
4 Miss Laura Maines is the CEO of Every Child,
5 Inc., which is located in Pittsburgh.

6 So thank you both for joining us. We'll
7 start with Dr. Vogler.

8 There you go. Light on. There you go.

9 DR. VOGLER: Thanks for having us here.
10 And thank you for giving me the chance to also
11 put some real world name and experience to this
12 issue. I appreciate that the speaker before me
13 did that with regards to some victims of the
14 issue that we all care about very much.

15 I will sort of propose that also for me,
16 on the other side of this, it's interesting to
17 hear from that speaker that we don't have an
18 insurance crisis. I'm wondering if I can get all
19 the sleep that I've lost over the last four years
20 back if we do not have that crisis. I'm here to
21 say that we do, and that my life over the last
22 couple of years is sort of testimony to that.

23 I have submitted written words that sort
24 of detailed what happened to Pinebrook Family
25 Answers' insurance situation over time. I will

1 tell you that the organization is the result of
2 three mergers that happened in the last five
3 years. In order to be good stewards of public
4 money, we merged organizations with three
5 different missions, came together. One in
6 forensics, one in child services, one more
7 focused on adult mental health services.

8 And the hole quickly became larger than
9 the sum of its parts. Five years ago, that
10 merged organization was about 4 1/2 million
11 dollars. Now, our budget is over 10. And we
12 provide services across the board to families in
13 the Lehigh Valley, and not residential services.
14 We provide services for our homebound seniors.
15 We provide services for citizens returning from
16 jail, mental health clinics, schools,
17 school-based services.

18 And four years ago, we were served with a
19 lawsuit. And that lawsuit was based on an
20 adoption that one of those three merged
21 organizations had done 17 years ago. That
22 adoption was done at the request of a county.
23 And it was because the organization at that time
24 was empowered through the Statewide Adoption
25 Network to do home studies for adoptions that

1 were going to occur from a child out of the SWAN
2 System.

3 The parents to do -- that were wanting to
4 adopt these children were already foster parents,
5 foster parents being managed by another
6 organization, but because that other organization
7 isn't in the SWAN network, we were asked to do
8 the home study, which we came in and did. One
9 would think that if you have an adoptive resource
10 that's already in the system, that's already been
11 sort of vetted by a foster care agency, and also
12 given the credentials of these potential adoptive
13 parents, that we would have kind of cut them some
14 slack. Precisely the opposite happened.

15 We did everything. We exceeded the
16 standards of the time for that home study. We
17 did all of the home visits, the criminal
18 background checks, the references, and these were
19 adoptive parents that there was no reason to
20 believe should not follow through on their
21 request to adopt these children, nothing, no red
22 flags. Ten years later, one of those children
23 suffered a horrific death and was murdered at the
24 hands of a person who was not even in the picture
25 at the time we did the home study. Nevertheless,

1 because of the horrific nature of that child's
2 demise, an outcry ensued and the desire and
3 demand for justice meant that a very wide net was
4 cast. And all kinds of organization, anyone who
5 was involved in this, was named, including
6 Pinebrook Family Answers. And we ended up
7 settling.

8 We settled for policy limits, not
9 necessarily because that was my intention, but
10 because the insurance company said, this is a
11 risk we are not willing to take, taking this to
12 trial. You did nothing wrong. We did nothing
13 wrong. If I went back and redid everything that
14 happened at the time that adoption occurred, we
15 would not change a thing. And yet, we were out,
16 and largely, I would say, as a result of that
17 case.

18 I would say also, because of the nature
19 of the insurance industry right now that's been
20 referred to, we were dropped by our insurance
21 carrier. And we were given very, very few
22 options, one of which was the Lloyd's of London
23 option that was referred to earlier. So to hear
24 that there are multiple options and that there
25 isn't an insurance crisis, I would -- I would

1 respectfully refute that. We had -- we had one
2 option at the time. And that option was not even
3 where we are now through A&E [phonetic]. That
4 option gave us a three-year tail and very small
5 limits and hugely increased premiums.

6 If immediately after that we would have
7 been served with another similar lawsuit, I
8 wouldn't be here. A huge number of recipients of
9 our programs that also protect children, that
10 also serve families, would be gone. All of the
11 benefit that Pinebrook Family Answers offers to
12 the Lehigh Valley would have been erased by one
13 more lawsuit because we were unprotected and
14 without a net.

15 That's a real story. That happened to
16 us, and I thought it important to share.

17 MAJORITY CHAIRWOMAN DELOZIER: Thank you
18 very much.

19 I will turn it over to Miss Maines.

20 Ms. MAINES: Thank you very much.

21 Can you hear me okay? The microphone is
22 on?

23 MAJORITY CHAIRWOMAN DELOZIER: Yes.

24 Ms. MAINES: Okay. Chairperson Delozier,
25 Chairperson Delissio, thank you so much, and

1 members of the Committee, for this opportunity to
2 talk about this really important issue.

3 My name is Laura Maines, and I have the
4 privilege being the chief executive officer of
5 Every Child. Every Child is a community-based
6 organization. We serve Allegheny, Washington,
7 and Westmoreland Counties with foster care,
8 adoption services, community-based behavioral
9 health, and a number of in-home prevention
10 programs.

11 I want to give you a little bit of my
12 background, just to provide some context to my
13 testimony today. Before I became CEO of Every
14 Child, I was an attorney for a long time and
15 served as a child advocate for over 20 years. I
16 have been a CASA volunteer. I have served on the
17 national board of CASA association. I have been
18 a guardian ad litem. I have been a pro bono
19 county solicitor for Allegheny County in really,
20 really complex termination of parental rights
21 hearings. I've represented adoptive parents and
22 biological parents.

23 So when I say I understand the system, I
24 really, really do. And I have seen firsthand the
25 devastating impact on kids and kids who -- as

1 they become adults, when the adults in their
2 lives and the adults in our system fail to
3 protect them.

4 I don't think anyone would disagree that
5 we need accountability in the child welfare
6 system. We are entrusted with these children,
7 and we need to keep them safe. But we do have a
8 complex system that relies on public-private
9 collaboration. And unfortunately, that
10 collaboration doesn't include shared risk at all.
11 Private providers, to whom counties have
12 outsourced their legal obligation, are left
13 holding the bag regardless of fault, regardless
14 of their conduct.

15 So about Every Child. We are a
16 non-profit community-based organization. And
17 this year, we're celebrating 25 years in
18 existence. Throughout that time, we have
19 provided foster care. We have been in the home.
20 Our services have never been center-based. We
21 have always worked with incredibly vulnerable
22 populations, not just kids who have gone through
23 horrific abuse and neglect. We have worked with
24 kids who are in the child welfare system and also
25 dealing with developmental disabilities. We have

1 worked with families where the parents have
2 developmental disabilities, and trying to
3 navigate that world. So we really do work with a
4 vulnerable population.

5 In my 25 -- in our 25-year history, we
6 haven't had one claim against our professional
7 liability insurance, not one. And the reason for
8 that, I believe, is that we really have held
9 ourselves to the highest, highest standards,
10 specifically with foster care. Our standards for
11 training and screening foster parents, for
12 conducting background checks, and the frequency
13 with which we conduct those background checks,
14 and the number of home visits that we conduct
15 exceeds our contract expectations with our
16 counties. It exceeds state regulation.

17 We -- because my background is a child
18 advocate, and I identify as an advocate first and
19 a provider second, that is baked into the culture
20 of our organization. So we really ask, what is
21 in the best interest of the child in front of us?
22 What does that child need to happen, and how do
23 we make that happen?

24 Secondary is, what are the terms of our
25 contract, and what are we required to do? I can

1 tell you, we're always doing more than that. In
2 spite of that, in the last three years, we have
3 been faced with an insurance crisis. It is real.
4 It does exist. For current litigation, a lot of
5 those policies are like my original policy.

6 when I came into this role, we were a
7 non-profit -- not Nonprofit Insurance alliance,
8 but we were with another -- we were with another
9 non-profit specializing insurance provider. We
10 were paying anywhere from \$12,000 a year -- it
11 sort of inched up over about a 10-year period to
12 \$15,000 per year for occurrence-based coverage.
13 So what that means is as long as the injury
14 occurred while the policy was in effect, we were
15 covered. We were notified three years ago that
16 our insurer was dropping foster care, that they
17 were no longer going to provide insurance to us,
18 despite having an almost 20-year relationship
19 with them at that point, and again, a claims-free
20 history.

21 So we had to go to market. And on those
22 insurance applications that we fill out, we are
23 asked questions like, what information do you
24 have about a child and their medical history when
25 they are placed with you. well, we have -- we do

1 emergency foster care. So sometimes we get a big
2 file with all the information. Sometimes we get
3 a stuffed animal and that's it, right. And we
4 have to become detectives and figure out where
5 has this child been, what happened, what do they
6 need?

7 They ask, you know, how do you get
8 information about medications the child is on,
9 and how can you -- how can you get those
10 medications filled? well, again, sometimes they
11 come with it. Sometimes we have a random
12 prescription for a medication. We can't follow
13 up with that because, as the provider, we don't
14 have ad med rights, which means I can't arrange
15 for one of our foster kids to go to a
16 psychiatrist for an evaluation.

17 The county child welfare caseworker has
18 to do that or the biological parent has to do
19 that. And if they won't return our call, we can
20 be sort of stuck, right. So we don't have that
21 information. So there are all these things when
22 I'm filling out the application that really make
23 it clear we don't have a lot of control around
24 risk mitigation. And then, I get the final
25 question that I know, as an attorney, is the nail

1 in the coffin. Do you have any indemnification
2 responsibilities in any of your public contracts?

3 well, I can tell you -- and I put some of
4 the language in my written testimony -- we sure
5 do. One of the largest counties in western
6 Pennsylvania requires that we indemnify them full
7 stop for anything arising out of or related to
8 the scope of work of our contract. That's huge,
9 right.

10 And so when we talk about how do we
11 protect kids, how do we mitigate risk, you know,
12 it is so disheartening as a provider with a
13 claims-free history, who is going above and
14 beyond, to hear from your insurer, that doesn't
15 matter. And now your rates are going to go up 50
16 percent. And by the way, instead of being
17 occurrence-based, it's going to be claims made.
18 So now, if I get dropped again, my option is to
19 go without insurance for, you know, for tail
20 coverage or to pay full freight.

21 So my insurance would double again. I
22 would have to pay -- right now, we're up to about
23 \$45,000 a year for insurance. I would have to
24 pay \$45,000 a year for tail coverage, in addition
25 to whatever new policy I was able to get.

1 To put that in perspective -- I said
2 Every child is a medium to small organization --
3 we serve about 1,000 individuals. We serve
4 families, so our actual count in terms of who's
5 in our medical records is smaller than that, but
6 our annual operating budget swings between about
7 \$3.8 million to \$4. And we've been about that
8 for a while now. I have about 50 employees. We
9 -- we are lean, but that kind of budget swing,
10 when I'm trying to figure out my budget, is huge.

11 And you know, in spite of our high
12 standards, it's frustrating to be told, that's
13 great, but you have to insure against conduct
14 that you don't control, and that makes you an
15 undesirable risk. And you know, the county -- as
16 I hope I've demonstrated -- they are our partners
17 when it come to decisionmaking. There is a
18 crisis in foster care right now. Some of it is
19 because of COVID, but we have kids that we want
20 to get into foster homes that we need to provide
21 care for. There are never enough foster homes,
22 right.

23 So we are doing our part, but what we're
24 finding now, because of that crisis, counties are
25 trying to take more and more control over our

1 operations. So I have a county in western
2 Pennsylvania that requires that I submit names of
3 not my open families, my certified families only,
4 but my families who have started going through
5 the training process, so that the county, if they
6 have a kiddo that they are having a hard time
7 finding a placement for, can circumvent my intake
8 person. And they can call that family, who has
9 not completed the training yet, and ask them if
10 they would be willing to be certified on an
11 emergency basis to take that child.

12 who do you think holds the liability if
13 that family is not ready to take a child with
14 those means, right? It's Every Child. It's my
15 organization. And then, I'm being put in a
16 position to guarantee their safety when I'm
17 saying, that family is not ready, I don't think
18 this is the right placement. That is
19 unacceptable. That is unacceptable. We need to
20 bring accountability to both parties, to our
21 public partners as well as to ourselves.

22 Look, I'll be the first to tell you there
23 are providers that should be out of business.
24 There are providers that should have been out of
25 business 20 years ago. No doubt, full stop,

1 right. But for those of us who are in the
2 trenches, who can demonstrate quality services,
3 who are trying to work with our public partners,
4 we should be sharing in that risk.

5 And I know the General Assembly agrees
6 with that. And the reason I know that is because
7 in 2019, you all voted to amend the Tort Claims
8 Act to make sure the county entities no longer
9 enjoyed sovereign immunity for sexual abuse
10 cases, right. And they have circumvented that
11 new liability, that new risk, by continuing to
12 hoist it onto counties.

13 So if a county caseworker -- in my
14 example, if a county caseworker were to sexually
15 abuse a child, under the law that you all put
16 forth, they should be -- they should be liable
17 for that, right, the county should be able to be
18 sued. But under the terms of our contract, we
19 have to indemnify that conduct because it's
20 arising out of our foster care placement, right.
21 It's arising out of the scope of work of our
22 contract.

23 So we really, you know, we really are
24 committed to kids. And by the way, every county
25 caseworker that I've worked with, by and large,

1 is as committed, right. But there's always that
2 outlier. That's why we've had the horrific cases
3 that you've heard about. That is not the
4 majority of providers. It is not the majority of
5 caseworkers.

6 The majority of individuals I have come
7 across in this field are committed to child
8 safety. They are committed to reunifying
9 families. They are committed to making sure kids
10 are safe, but we are insuring against the
11 outlier, right. And right now, that balance is
12 so out of whack that a lot of us are trying to
13 decide whether we can afford to continue
14 providing foster care.

15 I do want to correct the record a little
16 bit. Terry Clark was not referring to the
17 Wordsworth Academy. He was referring to Jewish
18 Family Services of Philadelphia, which did not go
19 bankrupt. They shut down all of their children
20 services because they were unable to get
21 insurance that they could afford. So there is an
22 organization that's still operating in
23 Philadelphia and providing adult services. So I
24 did just want to correct the record on that
25 front.

1 we also hear a lot of argument that,
2 well, you know, it's a bargain for contract. If
3 you all think that private providers have
4 bargaining power with counties, wow. And if
5 you're wondering if that's the case, I need only
6 point to the fact that we had to continue
7 providing services during a couple of budget
8 impasses when we didn't get paid. And the reason
9 for that is we are mission-driven organizations.
10 We are committed to seeing the kids get what they
11 need.

12 we will continue to do that even when we
13 have contract terms that are less than ideal.
14 And just, you know, to give you an example of how
15 it works, I reach out to my contract monitor or
16 the director of contracts at the county and I
17 say, hey, there's some language in this contract
18 that's really problematic, can we switch it?

19 And I have to tell you, it was sort of
20 hilarious. When I was new to this role, I was
21 like, I got this. I'm going to mark up this
22 contract and send it back. And I swear I heard
23 them laughing on Grant Street from where I was in
24 my office, right. Because the person I have to
25 negotiate with has no authority to change

1 contract language. And getting a county
2 solicitor on the phone is an exercise in spitting
3 in the wind as a provider, right.

4 So we really need legislative help to
5 correct this. I think that making these -- that
6 the risk sort of shifting, making that
7 unenforceable is a simple solution that will have
8 an impact. It may not bring rates down right
9 away. It's not going to solve all of our
10 problems, but it is going to pull a pressure
11 valve and release some of that pressure on the
12 market.

13 It is going to say, when I'm filling out
14 my paperwork for my next renewal, when I list all
15 the things we do to mitigate risk and make sure
16 that we're doing the right thing, that will
17 matter, right, because I'm responsible for me and
18 the county is responsible for them. And we have
19 no problem, if we screw up, indemnifying the
20 county. That's not what this is about, right.
21 And so I think this is a really simple and doable
22 solution. It will have real world impact, and
23 then we can all get on with the really
24 collaborative work of making sure kids are safe
25 and our services remain excellent.

1 So thank you all for your time. And I am
2 happy to take questions.

3 MAJORITY CHAIRWOMAN DELOZIER: Thank you
4 very much. Appreciate both of your input.

5 I have a real quick question, just to
6 clarify. You had mentioned the example that you
7 had said about the sexual assault. So if a
8 caseworker -- actually, let me take it back, the
9 family that is not ready. That's where we were
10 going.

11 MS. MAINES: Yes.

12 MAJORITY CHAIRWOMAN DELOZIER: Okay. So
13 the family that's not ready. We have a letter
14 from Allegheny County. And in the letter, it
15 says that the indemnification clause in our
16 county contracts makes the provider liable only
17 for harms caused by the acts of the provider in
18 performance of their contracted services.

19 MS. MAINES: That is not the case.

20 MAJORITY CHAIRWOMAN DELOZIER: That is
21 not the case?

22 MS. MAINES: That is not the case.

23 MAJORITY CHAIRWOMAN DELOZIER: Okay. So
24 just with your example, in the sense that they
25 contact a family that you don't feel is ready and

1 then there's some harm that comes to that child,
2 you're liable for that, even though it didn't
3 come through you.

4 MS. MAINES: That's correct. That's
5 correct, because we're the ones certifying that
6 family. We're the ones overseeing that family.
7 That family has to be tied to an agency. So in
8 Allegheny County, for example, there aren't
9 county foster families and then private provider
10 families. So for that family to have a child and
11 to get the, you know, per diem, get expenses
12 reimbursed, they have to be affiliated with an
13 agency, like they would be with ours.

14 I have heard that a lot from a lot of my
15 county contemporaries, in Allegheny County
16 specifically, that that's not what the
17 indemnification clause says. And I have a
18 truckload of lawyers who say otherwise.

19 MAJORITY CHAIRWOMAN DELOZIER: Yes, I'm
20 sure there's -- attorneys are on both sides of
21 the issue.

22 Okay. And that's why I just wanted to
23 clarify because the ability for the
24 indemnification, like I mentioned, in Allegheny
25 among others, not just Allegheny.

1 MS. MAINES: Sure.

2 MAJORITY CHAIRWOMAN DELOZIER: But
3 Allegheny had mentioned it in their letter. So
4 when you said that, I was kind of like that's not
5 -- okay.

6 MS. MAINES: Yeah.

7 MAJORITY CHAIRWOMAN DELOZIER: So with
8 the issue --

9 MS. MAINES: I'm sorry. I don't mean to
10 interrupt you.

11 MAJORITY CHAIRWOMAN DELOZIER: It's okay.

12 MS. MAINES: It's the broad scope of the
13 interpretation.

14 MAJORITY CHAIRWOMAN DELOZIER: Okay.

15 MS. MAINES: When you're talking about
16 arising out of or relating to, which is what is
17 in my contract indemnification clause, that is a
18 really broad scope.

19 MAJORITY CHAIRWOMAN DELOZIER: Okay.

20 MS. MAINES: It could be anything.

21 MAJORITY CHAIRWOMAN DELOZIER: Okay.

22 MS. MAINES: And that's how insurance
23 underwriters interpret it.

24 MAJORITY CHAIRWOMAN DELOZIER: Okay. All
25 right. Thank you.

1 And with the ability for us to understand
2 -- and we're running out of time, so I will have
3 to cut short my questions because I do have a
4 couple, but -- Chairman, did you have any?

5 Yeah. And now we're running out of time.

6 Representative Bonner, you had a
7 question? Where is he?

8 REPRESENTATIVE BONNER: Yes. Thank you,
9 Madam Chair.

10 Is the only requirement for liability
11 insurance coverage that which is set in the
12 contract?

13 MS. MAINES: It -- yeah, that is true.
14 However, as a non-profit provider, we also have a
15 volunteer board, right. And so even if insurance
16 were not required by our county contracts, it
17 would be wildly irresponsible for us to conduct
18 business without it.

19 REPRESENTATIVE BONNER: And what are the
20 limits that you typically are required to carry.

21 MS. MAINES: Oh, gosh. I know right now
22 we're at about a million is our limit.

23 REPRESENTATIVE BONNER: So the cases that
24 Attorney Bezar was referring to would not be
25 covered by what the counties are typically

1 requiring you to carry?

2 MS. MAINES: That's correct.

3 REPRESENTATIVE BONNER: The counties
4 generally have sovereign immunity. Now, I know
5 you cited the one case of sexual abuse, but
6 generally speaking, counties do not have
7 liability in this arena.

8 MS. MAINES: That's correct.

9 REPRESENTATIVE BONNER: And finally, if
10 you had your choice, would you prefer to see the
11 bill on indemnification elimination passed or the
12 cap on the limits of damage.

13 MS. MAINES: So let me just say that
14 while I appreciate the intent behind the damages
15 cap, I would oppose a damages cap, as an Every
16 Child Executive Director and as a child advocate.
17 So if I had my choice, I think that the best bill
18 for the system is the indemnification bill.

19 REPRESENTATIVE BONNER: Thank you.

20 MS. MAINES: Yeah.

21 REPRESENTATIVE BONNER: Appreciate it.

22 MAJORITY CHAIRWOMAN DELOZIER: Okay.
23 well, I appreciate it.

24 I do have other questions. And I will
25 get to you, which I'll ask offline, mainly with

1 just timing. We always run into a crunch with
2 the time.

3 So truly appreciate the information and
4 the written testimony that all of our testifiers
5 submitted so that we do have that to refer to.
6 And I guess one of the things that, just to end
7 -- and I know Chairman Delissio also has some
8 comments. I just want to say that in listening
9 to the panel, every single panel that we had
10 today, one of the things that struck home for me,
11 not only on the issue that we are dealing with
12 these two bills, but it was very interesting to
13 hear all of the background information on those
14 that are within our children & youth sector.

15 whatever side of the issue that you may
16 be on, one of the things that does make me feel
17 better is -- and really, actually, it's very nice
18 to hear how many are involved in so many other
19 issues outside of their job, all within the
20 sector of protecting our kids. So I truly want
21 to thank each and every one of you for not only
22 the job that you do to keep our kids safe, but
23 also your outside work because many, many times
24 that is kind of the unsung hero of all of our
25 children and youth across all of 67 counties.

1 So and many of you mentioned many of your
2 extra jobs, volunteerism, and that type of thing.
3 So across the board, thank you for what you do
4 during the day, and then what you volunteer your
5 time to make sure that our kids are safe. And
6 many of you, I know I will be reaching out to
7 because I appreciate that we had a time
8 constraint and I apologize for that.

9 But Chairman Delissio.

10 MINORITY CHAIRWOMAN DELISSIO: Just to
11 say that human services is inordinately complex
12 and highly nuanced. You know, nothing is black
13 and white, and certainly, as it pertains to
14 legislation in the General Assembly. It's all
15 shades of gray. So I appreciate that there are
16 at least two sides to every story and hearing all
17 the sides to this particular story.

18 And as we go forward, number one, I'd
19 like to echo, as in my opening remarks, that it's
20 the youngest citizens in this Commonwealth that
21 this Committee has oversight of, those who need
22 to avail themselves of the child welfare system.
23 So they are, in fact, priority one. So we need
24 to inform ourselves as much as possible.

25 And thank you all for the cooperation

1 that you exhibited today. And hopefully we'll
2 continue to exhibit it as we sort this out and
3 try to find a remedy for these situations. So
4 thank you very much.

5 MAJORITY CHAIRWOMAN DELOZIER: And with
6 that, the hearing is adjourned.

7 Thank you very much.

8 (Whereupon, the proceedings concluded
9 at 11:02 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me from audio of the within proceedings and that this is a correct transcript of the same.

Tiffany L. Mast

Tiffany L. Mast

Court Reporter