

Written Testimony of John F. Ehresman, AAI
Senior Vice President, Brown & Brown Insurance
Pennsylvania House Children and Youth Committee
House Bills #2213 and 2214
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Chair Delozier, Chair DeLissio, and Members of the House Children and Youth Committee:

Thank you for the opportunity to submit testimony in support of House Bills 2213 and 2214 on behalf of Brown and Brown Insurance. Brown & Brown, Inc. is the fifth largest independent insurance brokerage in the nation. We provide risk management solutions to help protect what our customers value most. Our four business segments, Retail, National Programs, Wholesale Brokerage, and Services, offer insurance products and services to businesses, corporations, governmental institutions, professional organizations, trade associations, families, and individuals. With more than 80 years of proven success, Brown & Brown is one of the industry's most powerful and influential leaders.

As specialists in the non-profit sector, we wanted to outline some of the trends in the **insurance industry** that have adversely affected the insurability of children's residential/foster care providers In Pennsylvania:

1. **Understanding Social Inflation:** Social inflation can generally be defined as the measurable, increased propensity to commence litigation combined with the trend of rewarding plaintiffs with ever increasing awards. "Social Inflation" and "nuclear verdicts" are now commonly used terms in insurance company actuarial science. This trend makes it difficult for insurance companies to underwrite and price risks.
2. **The Abuse Crisis:** In the last ten years there has been increased public attention to incidents of abuse as a result of various high-profile cases like Jerry Sandusky, Dr. Larry Nassar, the Catholic Church, The Boy Scouts, the "Me Too" movement, and others. Increased awareness of these legacy areas also brings greater scrutiny into any type of allegation of abuse, where children's residential treatment and foster care providers are now experiencing a spillover effect. Up until this point, it was generally understood that children and family services providers performed very difficult, specialized work with children that have severe emotional and behavioral issues. Now, given the greater public attention, claims that used to settle in the thousands out of court, are now settling in the millions with plaintiff's attorneys seeking policy limit demands or forcing a jury trial.
3. **State laws extending statute of limitation for abuse claims:** Starting around 2019, many states have passed laws known as "reviver statutes" that open windows where previously time-barred abuse cases are permitted to proceed. These laws have generated lawsuits on legacy incidents going back as much as 50 years. In addition, they extend statute of limitations on a prospective basis for abused youth to age 55. A 15-year-old youth in care today could potentially bring civil litigation for an alleged incident

over the next forty years. Insurance companies will take the brunt of this change and are being forced to pay for claims on a risk for which they never collected a premium. From a practical standpoint, although these well-intentioned laws were intended to cure past wrongs, they have spawned an unexpected set of problems in present time for insurance companies and the providers with which they work.

4. **Understanding Pennsylvania's children and family services sector:** Children and family services providers, such as the members of the Pennsylvania Council of Children, Youth, & Family Services (PCCYFS), deliver specialized services to a challenging population of youth across the Commonwealth. An understanding of this population is key to understanding the liability risk profile of these providers. Children served in the Pennsylvania child welfare system may have been abused or neglected and/or can manifest such complex behaviors including physical aggression, verbal aggression, sexual aggression, self-harm, elopement, property destruction, homicidal/suicidal ideation, tantrum behavior, bipolar disorder, depression, autism, or other forms of anti-social behavior and mental illness. The delivery of services in this area is by its nature imperfect, and can be emotionally draining on all those involved, especially parents.

Given the complexity and unpredictability of this work, when something goes wrong, as it inevitably does, there is now an army of litigators ready to demand extraordinary monetary compensation under professional liability or abuse liability policies. In some instances, it is for legitimate negligence, but in many instances, there is no negligence *per se*, only the lack of perfect outcome in an already difficult circumstance. Summed up in the words of one insurance executive: "If our insured did nothing wrong, we owe a million dollars.... If they did just one thing wrong, we owe five million dollars." It is difficult to look out on the landscape of traditional businesses and see where they are held to the same standard of perfection. It seems we are at a point of almost strict liability for child welfare providers. They are responsible for children in their care today and many years after they have left care for *anything* that goes wrong.

5. **Pennsylvania county contracts:** With the preceding legal climate in mind as context, Pennsylvania counties, which act as the funding conduit to most provider agencies, have strengthened their already burdensome risk transfer techniques. It is almost universal at this point for all county contracts to contain indemnification language requiring a contracted provider to indemnify and hold harmless the county for any and all acts involved with the care of a child even though the county may have had some involvement in that child's care. The provider agency is expected to automatically sign this agreement and provide proof that their insurance will name the county as an "additional insured" on their liability policies. In essence, the provider agency is purchasing insurance on themselves *and* the county even though the county may be culpable for some negligent acts in the care of a child. On top of the indemnification language, these same County contracts also require provider agencies to carry \$5,000,000 umbrella liability limits which in many cases is not commercially available or is cost prohibitive due to current market conditions mentioned above.

Going forward, insurance companies are forced to charge more for social inflation as well as the new “long tail” liability that they now must keep on the books from statute of limitation and reviver statute changes. In practical terms, an insurance company that underwrites a children’s service provider can never really close their books on potential liability claims. It is forcing them to look for ways to defend against this new actuarial unpredictability. This is now manifesting itself in several ways: they are charging more, walking away from certain classes of business, converting policies to claims-made contracts that reduce their exposure, reducing limits of liability, and underwriting to avoiding certain venues where plaintiff awards are excessive.

Organizations that provide child welfare services are now feeling these effects and experiencing overwhelming stress in the liability insurance market. The worst of this stress is being felt by children’s residential and foster care providers. Almost all of these organizations are 501(c)(3) non-profit organizations that have very limited financial flexibility to absorb a doubling or tripling of insurance premiums. This is in addition to coverage restrictions. In a fair number of cases, some of these providers are now void of any coverage for retroactive claims and may only have very small limits (\$100,000) for future claims. In essence, they could be one claim away from going out of business. Finally, these coverage restrictions also put many of these providers out of compliance with County funding source requirements, further exacerbating an already difficult situation.

Under the current system, the direct service provider has to indemnify and hold harmless the counties with which they contract. This makes the entire process more expensive. A small foster care provider is basically insuring an entire county whenever a claim occurs, regardless of which party contributed to the harm. In response, insurance companies are starting to eliminate this extension of coverage. Legislation eliminating or curtailing the impact of county indemnification language would be an important first step in reducing the heavy load that provider agencies must carry to remain in this incredibly meaningful business.

Thank you for the opportunity to present testimony on this important issue. If you have any questions or if we can provide you with additional information, please do not hesitate to contact me.

Sincerely,

John F. Ehresman, AAI
Senior Vice President
Brown & Brown Insurance