



**Written Testimony of Terry L. Clark, MPA  
President and CEO, Pennsylvania Council of Children, Youth & Family Services (PCCYFS)  
Pennsylvania House Children and Youth Committee  
House Bills 2213 & 2214  
January 25, 2022**

Chairperson Delozier, Chairperson DeLissio and Members of the House Children and Youth Committee:

On behalf of the Pennsylvania Council of Children, Youth & Family Services (PCCYFS), thank you for the opportunity to submit testimony in support of House Bills 2213 and 2214, bills that would assuage some of the insurance challenges faced by provider agencies by limiting damages in actions against children and youth social service agencies and making unenforceable contract language that inequitably shifts liability from a public agency wrongdoer to a contracting children and youth provider. Imbalanced liability shifting is bad public policy and violates a key tenant of risk management. Particularly when it comes to caring for children, the offending party should not be to be shielded from its own responsibility via a contract.

PCCYFS is the collective voice for private agencies that serve Pennsylvania's most vulnerable children and their families. PCCYFS represents nearly 100 private agencies employing more than 10,000 professionals statewide. Their services include foster care/kinship care, adoption, residential treatment, behavioral health services, education, counseling, independent living/transitional living services and many others.

PCCYFS members are committed to providing excellent care in safe and supportive environments. Unfortunately, within the past couple of years, regardless of claims history, providers of placement services have found it increasingly cost prohibitive, if not impossible, to obtain professional liability insurance. In a 2019 survey of our members, although 70.27% of respondents stated that they have not had a substantiated or indicated incident in the past 5 years, 48.65% noted a significant premium increase in liability coverage. In the past 2 years, at least four provider agencies have closed their children and family services programs and many more that have significantly scaled back on programming or opted not to expand their operations as a result of insurance affordability issues.

Providing 24-hour care through foster care, adoption or residential services, carries inherent risk. Agencies that support traumatized families and children face increasing costs but stagnant funding and a shrinking workforce, while the need for services and complexity of cases increases exponentially. In addition to the nature of the work, increased media attention

3425 Simpson Ferry Road, Suite 201, Camp Hill, PA 17011  
www.pccyfs.org | 717-651-1725 | hbgooffice@pccyfs.org

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around high-profile cases with multimillion-dollar settlements both locally and nationwide have led to disruptions in the insurance market. Skyrocketing premiums paired with limited or no retroactive “tail” coverage are forcing providers to decide whether they will continue to operate uninsured against any allegations (past or present) or whether they will cease providing these essential placement services all together.

Many county-provider contracts require a provider to indemnify the county and outline high insurance coverage standards for providers to meet. In the cases where providers are required to indemnify the county for the negligent or wrongful acts of the providers, many insurance carriers are willing to provide that level of coverage. However, insurers draw the line when the country requires the provider to indemnify the county itself for the negligence or wrongful acts of the county and their employees. Very few county contracts are open to negotiation and providers are expected to agree to all provisions of those contracts. County contracts for these services also sustain authority to mandate aspects of provider operations, impacting provider efforts at risk mitigation. Furthermore, in many cases, the government is actively making decisions impacting the lives of the most vulnerable that may result in harm. Providers have no control over the decisions of government agencies. The practice of shifting liability to providers coupled with the provider’s diminished role in decision making has a crippling effect on provider agencies’ ability to find coverage. Given the volatility and uncertainty of the work, few insurance companies are willing to provide coverage within the field of human services and even fewer are willing to provide coverage in the field of child and family services. Insurers are adamant that they cannot insure risk exposures over which the provider agency has no control and when providers are required to take on this responsibility via contract they become uninsurable.

Just as the problem derives from a multitude of systemic pressures, the solution is not a simple one. While these pieces of legislation would not alleviate all affordability challenges that providers currently face, they will ultimately help more insurance carriers stay in this market, thereby increasing the pool of insurance options and driving down costs for provider agencies. Many major carriers have withdrawn from the market or significantly increased the cost of coverage to account for the variables driven by contract language. House Bill 2214 offers insurance carriers a clear understanding of who and what they are insuring. To clarify, it is not the contract requirement to indemnify government for the negligent or wrongful acts of a provider that causes the problem for insurance companies; the risk shifting contract requirement where the provider is required to indemnify for the negligent or wrongful acts of the government agencies is the issue.

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On a policy level, making these risk shifting indemnification clauses unenforceable places accountability squarely on the shoulders of the party whose action or inaction caused the injury. Any indemnification shifting means that the party who committed the negligence or the wrongdoing has no consequences for their actions. This encourages repeated injury of children being served, an outcome that stands at absolute odds with the goals of our work. Without House Bill 2214, the party that caused harm continues its work with children and families while evading accountability for events that occurred. On the other hand, the indemnifying provider is left with the financial burden that could result in program closures, displacement of quality workers, service disruptions, and other misplaced repercussions for accepting liability for another party's substandard work. Rather than perpetuate this cycle, PCCYFS recommends the use of a fair contracting model that evokes accountability and allows a victim of injury to seek restitution from the responsible party. House Bill 2214 does not create blame where it does not exist, it does not shift undue blame to a county or other government agency – it promotes fairness and justice for all parties involved but most importantly to the family who has experienced harm.

For the past three years, the state, counties and private providers have been diligently implementing the federal Family First Prevention Services Act requirements. This law seeks to drive the child welfare system to recruit and retain high-quality foster families with an emphasis on kinship care, implementing evidence-based services and focusing on prevention services. This important evolution of our system will be jeopardized if a solution to this insurance crisis is not resolved. The inability to afford insurance has put the entire safety net of the child-serving system at risk of collapse.

Legislation is a critical component to resolving this issue. Without legislation, providers are relying on counties and other government agencies to voluntarily commit to revising contract language. However, even if counties and providers achieved such consensus, administrations and leadership will change over time, which can lead to a shift in commitment. In a review of almost 20 different county contracts, an insurance provider found that only one contract decisively did not include some degree of improper risk shifting. Additionally, in reviewing county contract language, PCCYFS has found that some counties are unaware of the implications of the indemnification requirements in their own contracts that are keeping insurance companies from offering insurance to providers in our state. Even small word changes can dramatically change the implications of the indemnification language. Any municipal agency can leverage ambiguity in their interpretation to push for the provider agency (typically the weaker party in the negotiations) to assume liability over which the provider has no control.

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Anti-indemnity laws currently exist that prohibit unfair responsibility shifting in other systems. In fact, almost every state has legislation that renders void and unenforceable contracts related to construction sites that purport to impose on the contractor or relieve the public agency from liability for the active negligence of the public agency. We are asking that children and families be afforded the same protection and opportunity as construction projects.

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 at [TerryC@pccyfs.org](mailto:TerryC@pccyfs.org) or 717-651-1725.

Sincerely,



Terry L. Clark, MPA  
President/CEO, PCCYFS

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