TEXAS ALLIANCE OF CHILD AND FAMILY SERVICES

BRIEF

Liability Insurance

Comprehensive Coverage for Child Welfare Providers

BACKGROUND

Texas relies on residential child care providers, or child welfare providers, to provide placements, care, and services to children in the state's foster care system. Texas is in the midst of multi-year implementation of Community Based Care, or CBC. The CBC model relies on contracts regionally with lead agencies, or Single Source Continuum Contractors, to build a local network and take responsibility for the placement and care of children in foster care in that area. While the majority of the functions of the state transfer to these agencies and their network of providers, the state's liability protection does not, and lead contractors and providers are taking on significant risk.

Child welfare providers are contracted through the Department of Family and Protective Services and licensed through the Health and Human Services Commission. They are held accountable through intensive licensure and contracting requirements, and monitored on-site regularly through both agencies.

Providers are required to be insured for General Liability, Professional Liability, and Sexual Abuse. It is increasingly difficult and expensive for child welfare providers to obtain insurance overage due to a shortage of insurance carriers, skyrocketing premiums for those willing to insure, and/or insufficient policy coverage. A TACFS survey found that:

More than half of the respondents that responded saw a premium increase over 40% in the last five years alone.

70% of respondents said the **change in insurance was forced due to declining market coverage**

75% of respondents **changed insurance coverage in the last ten years**

THE IMPACT

Child-serving organizations are not developing or utilizing capacity to serve children with complex behavioral health or medical needs. Children that enter foster care often experience significant trauma relating to abuse and neglect, and show trauma-related behaviors or other complex needs in care. Children and youth may self-harm, runaway, or show aggression. While no fault of the child or the caregiver, these behaviors carry with them inherit risk. Organizations are reporting they are more reserved in the ways they serve families and are shifting models of care away from treatment or residential care due to the increased organizational cost and risk.

- **Insurers are dictating coverage rather than what is best for the child.** With few options available, insurers are able to create the scope of coverage, rather than an organization shopping for the policy that will best suit their array.
- **Environment is threatening the sustainability of high-quality providers.** Skyrocketing premiums may result in organizations shifting resources where they are otherwise needed, such as supporting direct care or developing new programming.
- **Increased risk for organizations threatens professional and organizational integrity.** Lack of coverage results in an increased risk for frivolous or unfounded allegations with limited recourse.

THE COMPLEX LANDSCAPE OF CHILD WELFARE

Notably, this shift in the insurance market is nationwide and impacting many states, regardless of their models of care. States including Florida, Tennessee, Pennsylvania, and Ohio, are addressing, or have already addressed this issue.

Declines from insurers are for reasons including “class of business,” “out of appetite,” and “uncompetitive.” Due to the changing landscape of child welfare, the risk is high and the space may no longer considered a solid market. Mitigating factors in Texas may include:

Increased regulatory oversight. In Texas, providers are held accountable by multiple oversight entities including DFPS and HHSC. Additionally, focus from high profile cases and a federal foster care lawsuit have led to an environment of strict regulatory compliance.

Risks unrelated to perpetrator. Texas’ statute allows for long-term liability for the perpetrator of the abuse, who should be held accountable, but the law also includes others who are indirectly involved such as the administration. Because of the duration of the risk and the extent, it is difficult and expensive for insurance carriers to price—not because all of the actors in question are guilty of perpetrating abuse, but because there are so many potential claims.

WHAT CAN THE LEGISLATURE DO?

Explore options for improving liability protection as a means of addressing insurance coverage and stabilizing foster care capacity for the state. In particular, consider providing liability protections for licensed providers acting as an “agent of the state,” or taking on the care and treatment of children that would otherwise be provided for by the state.

- Look at approaches considered or adopted in other states, such as Florida, Pennsylvania, and Ohio.
- Ensure approach will support the operational sustainability of quality providers in good standing, rather than protecting bad actors.