

LIABILITY INSURANCE FOR CHILDREN'S SERVICES PROVIDERS



Insurance Challenges

Providers of foster care, adoption, residential treatment centers, and other placement services are finding it increasingly cost-prohibitive, if not impossible, to obtain professional liability insurance.

- Providers are struggling to find adequate coverage as skyrocketing premiums are paired with limited or no retroactive "tail" coverage.
- Insurance policies are being changed from occurrence base coverage to claimed based coverage also limiting historical protection.
- Dozens of insurers have left this market altogether and, regardless of claims history, providers are being denied on a "class of business" basis.

If a provider is able to obtain a renewal, they see significant increases in their premium cost with limits of coverage also greatly reduced.

How Did We Get Here

Although providing human services carries inherent risk, there are a number of drivers that have brought the children's services field to this point:

- Counties receive governmental immunity for most non-sexual abuse cases. Extreme verdicts that punish the provider, as an entity with no immunity, for the unforeseeable actions of others threaten the well-being and safety of the 19,287 children that rely on Pennsylvania's child welfare system.
- Unfair risk shifting from government agencies to the provider, regardless of who has contributed to or caused an incident.
- Provider agencies must also meet liability insurance requirements to sign county contracts that are not regularly open to negotiation to alter indemnification or liability insurance requirements.
- Insurers are particularly resistant to covering risk exposures over which the provider has no control.

Some agencies have closed entirely. Others have closed only their children and family services programs. Many have been advised not to open additional programs. This trend will only continue, jeopardizing the safety net for Pennsylvania's communities and families.

LEARNING FROM CALIFORNIA

The Nonprofit Insurance Alliance (NIA) was the insurer of 90% of the state's 220 foster² family agencies and California's last major insurer. Most recently, however, NIA was forced to non-renew all of their foster care providers³, leaving a number of California's children and families in limbo after California refused to enact a package of bills⁴ to support insurers' abilities to continue operating. NIA, also one of the last major insurers in Pennsylvania, has been clear that it will have to consider similar options here if essential legislative safeguards are not put in place. NIA has already alerted all of their brokers in PA that they are only renewing at a 100% rate increase if a renewal is offered and not renewing umbrella policies in all states.

[2] Nonprofit Insurance Alliance, "NIAC Announces Nonrenewal of All Coverages for California Foster Family Agencies" <https://insurancefor nonprofits.org/niac-announces-nonrenewal-of-all-california-foster-family-agency-coverages/>

[3] Elly Yu. "What's next for foster families after an insurance shakeup threatens to upend thousands?" LAist. October 3, 2024. <https://laist.com/news/education/early-childhood-education-pre-k/foster-families-youth-niac-insurance-port-agencies>

[4] California Assembly Bill 2496. Liability Claims: foster family agencies and noncustodial adoption agencies. (2023-2024) <https://insurancefor nonprofits.org/ffa-support/AB-2496.pdf>

INSURER-BACKED SOLUTIONS

Closing a Loophole: Unilateral Waiver of Subrogation

During the 2021-2022 legislative session, PCCYFS was able to successfully advocate for the enactment of House Bill 2214⁵, an important first step in addressing the looming insurance crisis. HB2214 made void or unenforceable language in county contracts that seeks to shift all responsibility to the provider regardless of who is at fault. Since then, however, counties have found alternative ways to unfairly shift liability to a provider, one of which is to require providers to unilaterally waive their rights to subrogation, essentially limiting a provider insurer's ability to collect from the county.

Revising the Standard

Both Philadelphia and Pennsylvania have been recognized for their excessive litigation abuse and the resulting fiscal impact⁶ this has on its citizens and children's services providers. PCCYFS proposes revising the standard for a provider to be held liable, which requires a plaintiff to show that:

- The provider failed to substantially comply with their legal and regulatory standard;
- The law or regulatory standard that they failed to comply with was intended or designed to prevent the specific type of harm that occurred in the case; AND
- this failure was a cause of the actual harm that occurred

Informed Decision Making

When a defendant/insurer receives a time-limited demand, there should be certain facts and ample time provided to allow them to make an informed decision. Legislation to support that notion should allow for:

- The time period within which the demand must be accepted shall not be fewer than 60 days from the date of transmission of the demand, if transmission is by email facsimile, or certified mail, or not fewer than 63 days if transmission is by mail.
- A clear and unequivocal offer to settle all claims within policy limits, including the satisfactions of all liens
- An offer for a complete release from the claimant for the liability insurer's insureds from all present and future liability for the occurrence
- The date and location of the loss and the claim number, if known
- A description of all known injuries sustained by the claimant
- Sufficient evidence which may include, if applicable, medical records or bills, sufficient to support the claim

Establishing a Duty Of Care

Providers are expected to cover unforeseeable and unrelated incidents that occur, regardless of the scope of their relationship to an incident. PCCYFS proposes a multi-prong approach to ensure that provider liability is only applied in relevant circumstances where a special relationship exists between the agency and the plaintiff.

- First, the court would have to decide if a special relationship existed between the provider and the plaintiff or the perpetrators of the harm to the plaintiff and if so
 - The court will evaluate the foreseeability of the harm to the plaintiff
 - The degree of certainty that the plaintiff suffered injury
 - The closeness of connection between the providers conduct and the injury suffered
 - The moral blame of the provider's conduct
 - The policy of preventing future harm,
 - The availability, cost and prevalence of insurance for the risk involved.
- There must also be consideration for how reasonably foreseeable the plaintiff's injury was in light of the provider's conduct.

Damages Caps

Damage caps legislation limits the amount of damages a plaintiff can be awarded. Caps would help solve the problem of unreasonable, out-of-control damages awards which can have serious immediate impacts on children's services providers.

[5] Pennsylvania House Bill 2214: An Act amending Title 67 (Public Welfare) of the Pennsylvania Consolidated Statutes, in miscellaneous provisions, providing for miscellaneous provisions; and making an editorial change. (2021-2022) [Document Link Here](#)

[6] American Tort Reforms Foundation. 2024-2025 Judicial Hellholes® Report. [Document Link Here](#)

GLOSSARY OF RELEVANT INSURANCE TERMS

Claims Made: Claims made basis is an insurance policy provision that only covers claims made and reported during the policy period. This means that if a policy is canceled or expires, the policyholder is no longer covered for claims that occur after that date.

Class of Business: The type of industry a business belongs to – is used to help insurers determine risk and set premiums.

General Liability/Business General Liability/Commercial General Liability: Flexible & broad commercial liability covering the financial risk of civil lawsuits arising from bodily injury and property damage.

Indemnification: Is an agreement with a third party where your insurer helps cover loss, damage or liability incurred from a covered event by the third party.

Occurrence (Based): An occurrence or occurrence-based policy covers claims arising from acts or incidents that occurred during the policy period, regardless of when the claim is made. For policies written on an occurrence basis, the timing of when the claim is made doesn't matter, it could be years later. What matters is when the act or incident that gave rise to the claim took place; if the act took place outside of the policy period, it is not covered.

Professional Liability Insurance: Coverage for employees and other related professionals for damages resulting from errors and omissions in the provision of services.

Social Inflation: Social inflation can generally be defined as the measurable, increased propensity to sue 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 insurers to underwrite and price risks.

Subrogation: Refers to the right of an insurance company to recover funds that it has paid out on behalf of its policyholder from a third party who is responsible for causing the loss. In other words, subrogation allows an insurance company to step into the shoes of its policyholder and pursue a claim against a party that caused the loss.

Tail Coverage: Tail coverage protects you for insured events that occurred while your policy was in effect, even though the actual claim was filed after the policy lapsed. Tail insurance does not provide coverage for acts that occur during the time period of the tail, known as the extended reporting period. Tail coverage is exclusively related claims-made policies and is typically purchased in yearly increments (1,2,3) after a claims made policy is non renewed.

Umbrella Policy/Umbrella Coverage: An umbrella policy offers liability protection beyond the limits of your other commercial insurance policies. If something happens and you're held financially responsible, umbrella insurance can help pay for covered claims after you reach the limits of your other policies. It typically sits on top of underlying general liability, professional liability, sexual abuse and automobile coverage.

Children's Services Insurance Case Study

A child welfare provider may have had their \$1,000,000 limit general/professional/abuse coverage on a claims-made basis for 15 years. So, they would have a retroactive date of 7/01/2015. They have a bad claim in 2024 and get non-renewed by the carrier they have been with for 15 years. In the current market the only new carrier they can find is now charging them triple the previous carrier, has a \$100,000 sublimit for abuse and will not match the 7/01/2015 retroactive date. It's called "retro date inception".

The previous carrier that just non renewed them only offers a two year "tail". On 7/01/2027 when the tail expires, this organization will now have NO coverage for any incidents that occurred between 7/01/2015 and 7/01/2025. Since dealing with kids has a "long tail" exposure because of the new extensions to the statute of limitations, there is a pretty good chance this provider could have one or more uncovered claims that occurred between 2015 and 2025.

Adding insult to injury, their current insurance is now triple the premium and might only have \$100,000 limit for abuse claims. There is likely no umbrella available to cover over the professional and abuse coverage which puts them in violation of some of their county contracts, which they then have to request waivers for.

Resources

https://www.americanbar.org/groups/senior_lawyers/resources/voice-of-experience/2024-august/covering-your-tail/

<https://www.bbrown.com/us/>

<https://content.naic.org/glossary-insurance-terms>

<https://insuranceforonprofits.org/>

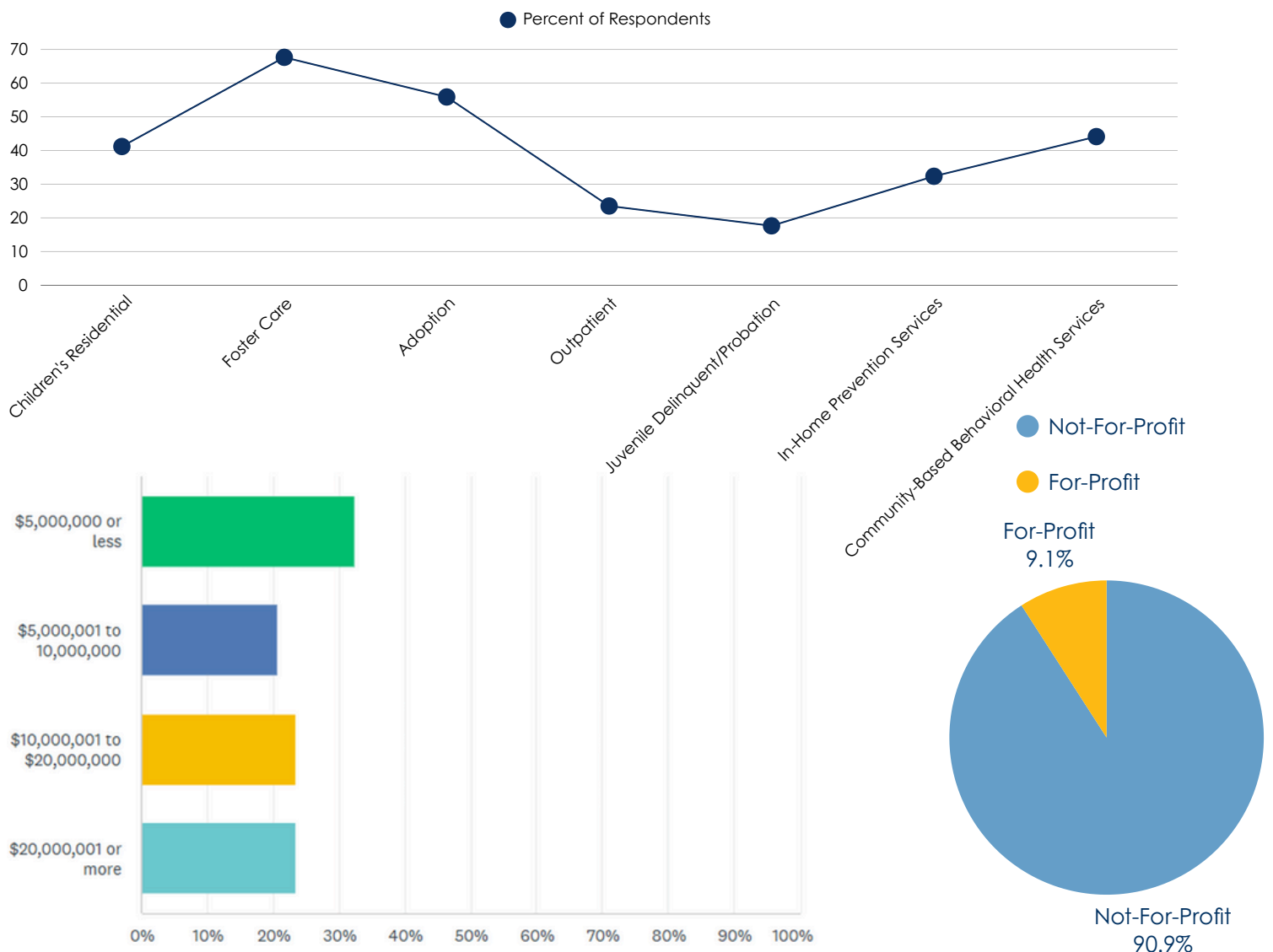
<https://insurancetrainingcenter.com/>

<https://nonprofitrisk.org/resources/glossary-of-risk-management-and-insurance-terms/>

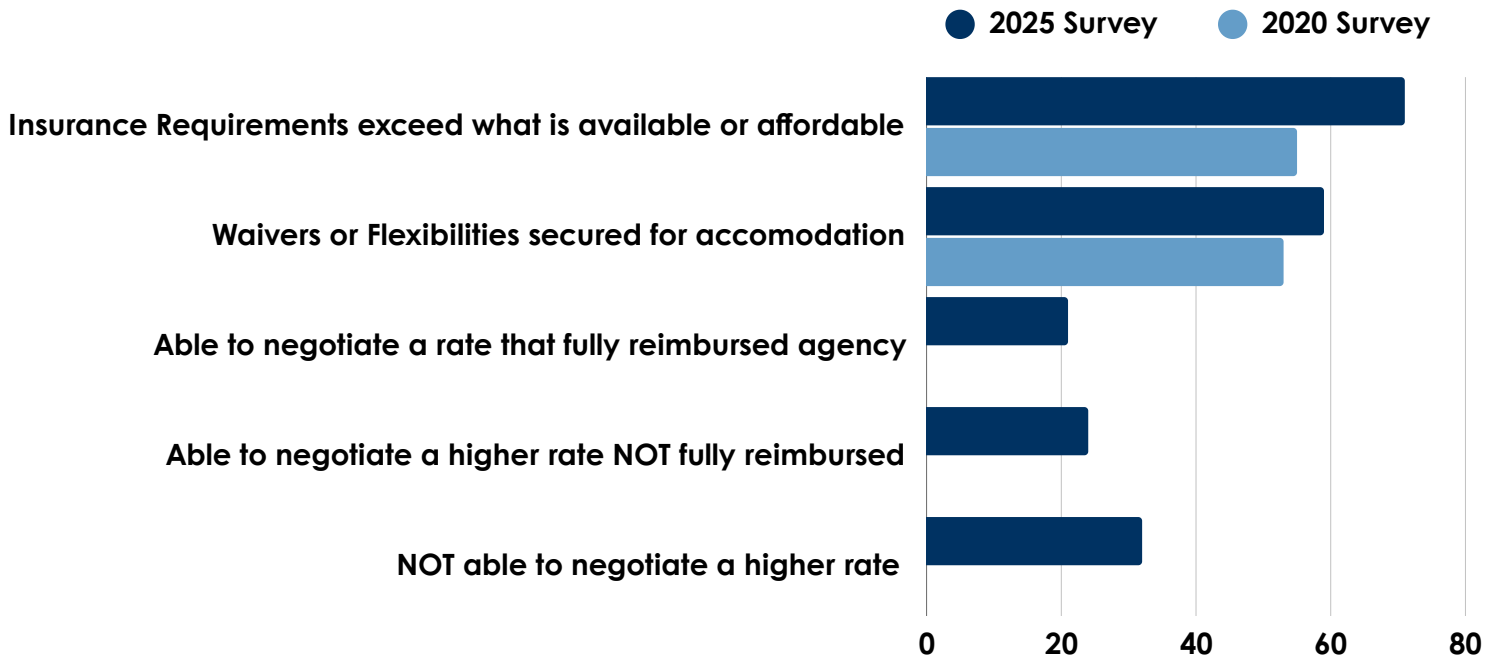
In March of 2025, PCCYFS issued a survey for children's services providers to complete received 34 responses. PCCYFS issued a similar survey in 2020, which showed shifts over the past five years.

Who Completed the Survey

- 34 Respondents
- 70,200+ children and families served per year
- When combined, respondents held contracts with all 67 counties in Pennsylvania.
- 2,484 years in their respective fields cumulatively represented



Funding



A staggering 71% report that they have experienced funding source (state, county, city) insurance requirements for general/professional/abuse coverage that exceed what is affordable or available in the insurance market. Of those organizations, 59% have been able to secure waivers or flexibilities to accommodate this disparity. In a 2020 PCCYFS survey, only 55% report funding source requirements that exceed what is affordable or available in the insurance market and 53% were able to secure waivers or flexibilities.

Additionally, for those organizations that experienced increased insurance costs, 21 percent noted that they were able to negotiate a rate that fully reimbursed their agency for the increased costs, this pool of respondents included community umbrella agencies, who were able to successfully negotiate with Philadelphia DHS to cover their insurance costs.

24 percent were able to negotiate a higher rate, but were not fully reimbursed for their increased costs. One agency described that while they negotiated a higher rate to cover some insurance costs, they operated at a \$203,000 loss last year. Another estimates approximately \$682,000 of their insurance costs remain unreimbursed.

And 32% were not able to successfully negotiate a higher rate.

Coverage Changes

- 82% of respondents had **NO** substantiated/indicted incident of physical or sexual abuse in the last 5 years
- 88% reported experiencing a significant **premium increases** in general/professional/abuse liability coverage costs - this represented an increase of 40% from a survey we issued in 2020

Respondents reporting Policy Limits on General/Professional/Abuse/Umbrella Liability coverage

The reductions that were reported by 32% of respondents were significant.

"Our umbrella coverage will exclude abuse, professional liability and employee benefits. Professional liability and abuse are claims made. The deductible is now \$10,000 per claim on professional liability and abuse."

"Limits were dropped by \$2 million on umbrella coverage"

"Can only get \$1M excess over professional and abuse"

"\$10M umbrella liability coverage dropped to \$5M last year at the same premium and then this year dropped to \$2M at the same premium."

"Originally 10 million... Down to 1 million... Now no umbrella"

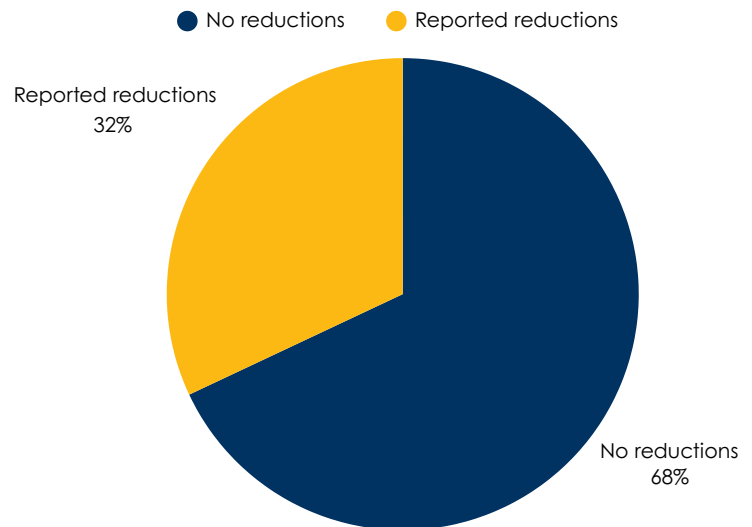
"Current provider is continuing to reduce the availability of umbrella units, we had to move part of our umbrella insurance to a different insurance company."

"No longer provided an umbrella"

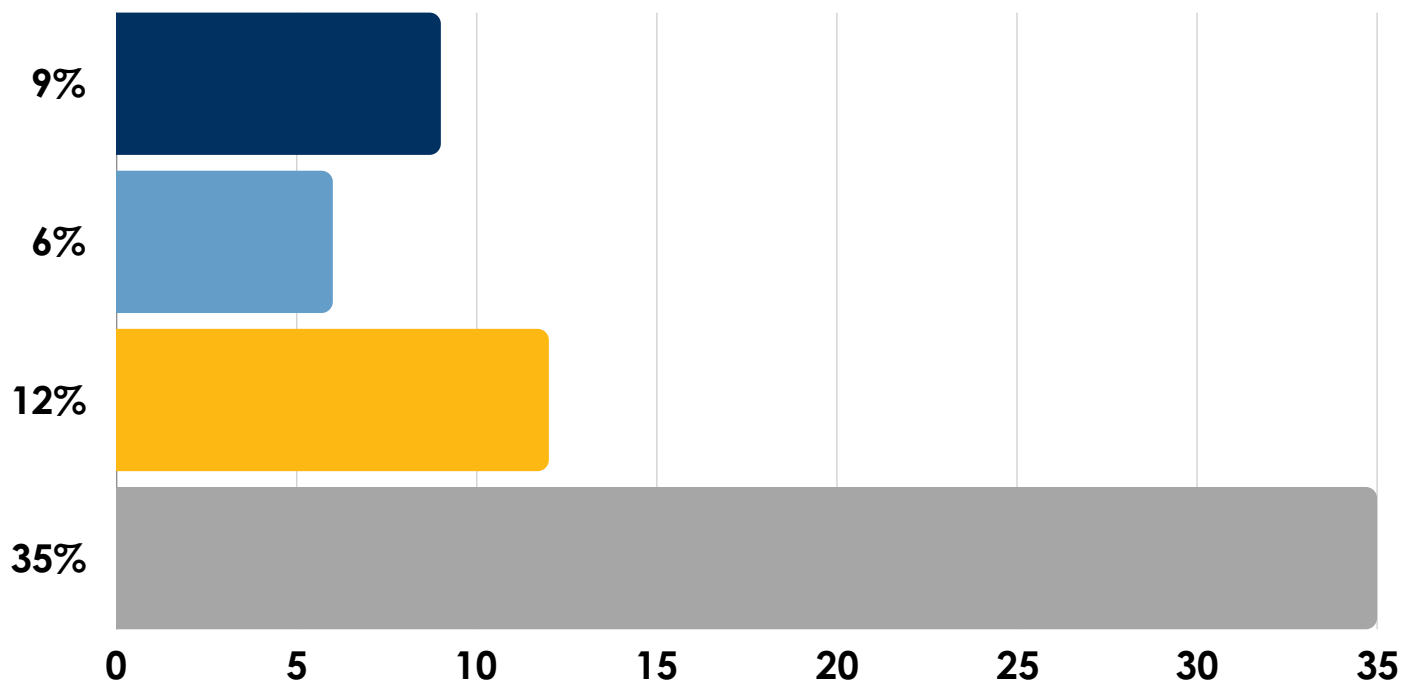
12% of respondents noted that they no longer have an umbrella policy.

44% report that their general/professional/abuse liability policy has been converted to a "claims-made" form of coverage, while a PCCYFS survey from 2020 reported only 11% experienced a change to "claims-made" coverage.

And 64 percent reported that their policy no longer offers tail coverage, which means that they have no coverage for claims filed after the policy expires for incidents that cooccurred while the policy was active.



Impact to Programming and Service Capacity



12 organizations (35%) reported that they are currently considering closures related to insurance costs, including one that is considering ceasing all operations within the next 12 months. Other programs considering closing include foster care and adoption services and many have said it is an ongoing discussion on a year-to-year basis as they struggle to find affordable insurance options.

4 organizations (12%) have had to close programs due at least in part to insurance costs, including alternative education programs for disruptive youth, a community umbrella agency, foster care, a boys' licensed residential placement (LRP), 6-bed group home and associated drug & alcohol treatment licensure

3 organizations (9%) were unable to open or expand a new program area

2 organizations (6%) have had to reduce capacity in their programs related to insurance costs