

The State of the Insurance Marketplace for Nonprofit Human Service Providers in 2020

Kevin P. Dougher | Vice President, Partner | Johnson, Kendall & Johnson, Inc.

Background and History

Over the past three years, insurance companies have tightened their underwriting criteria for *nonprofit human service providers*. The term, *nonprofit human service provider* is of course very broad. This category includes a very diverse group. For instance, nonprofit organizations that offer foster care and adoption services are extremely different than those that offer employment opportunities and day program support services for individuals with disabilities. Nonetheless, if you were an organization that falls under one of these descriptions, you would be grouped into the *nonprofit human service provider* category by an insurance company.

Until recently, it was commonplace for a single insurance company to be able to offer liability limits (through an Umbrella Liability policy) to *nonprofit human service providers* that were as high as \$15,000,000 to \$20,000,000. These limits would be inclusive of coverage for Sexual Abuse and Molestation at the full limit or at a high sublimit such as \$10,000,000. Coverage for Sexual Abuse and Molestation was typically on an Occurrence basis¹ rather than a Claims Made basis². Over the last three years, this practice came to a screeching halt. Two major changes occurred. Many insurers began a trend of offering Claims Made policies with a retroactive date³ of policy inception rather than providing full prior acts coverage or rather than providing Occurrence policies. This trend has hit child welfare related *nonprofit human service providers* more than any other part of the industry. As if that were not enough, *nonprofit human service providers* who feel the need to carry limits of liability greater than \$3,000,000 are doing this through a network of insurers. To achieve a desired limit, *nonprofit human service providers* must create a tower of insurers where each offer several million dollars in liability limits. This is known as creating a liability tower or layering limits. The cost of liability limits today are now regularly five or more times as much as it cost ten years ago. The reason that most insurers have changed how they offer insurance policies to many *nonprofit human service providers* is due to their desire to (1) reduce the exposure to loss for long tail Sexual Abuse and Molestations losses and (2) remove the probability of paying large limit losses for Auto liability claims since the frequency and severity are on the rise.

How did we get here?

Nonprofit human service providers are faced with a confluence of events today. The rate and severity at which insurance companies have paid losses resulting from Automobile accidents and Sexual Abuse and Molestation claims has been the trigger point. Since 2007, the Property and Casualty industry was in a largely soft market. In other words, it was a buyer's market. That tide started to change in 2018 as the marketplace tightened. According to The Council of Insurance Agents & Brokers (CIAB), all commercial lines except for Workers' Compensation experienced increases in premium pricing for five consecutive quarters dating back to Q4 2017. Across the United States, Commercial Auto Liability rates experienced increases for 30 consecutive quarters and still, the 2018 combined ratio⁴ was 111%. In other words, insurers paid \$1.11 for every \$1.00 in premium collected. *Nonprofit human service providers* were not immune from these losses. Many *Nonprofit human service providers* rely on fleets of vehicles to provide services to clients. *Nonprofit human service providers* are in an industry where the usage of vehicles is a significant part of the overall operations in order to fulfill the mission of the *nonprofit human service provider*.

Sexual Abuse and Molestation incidents and insurance coverage has been a major topic of conversation with *nonprofit human service providers*, insurers, brokers, legislators and lawyers the past several years. In 2019, seventeen states and Washington D.C. had laws go into effect that extended or eliminated the amount of time victims of child sexual abuse were given to sue or seek criminal charges against their abusers, according to advocacy group Child USA. The [statute of limitations reform](#) has created a big unfunded liability for insurers. Insurers that wrote liability insurance, inclusive of coverage for Sexual Abuse and Molestation, will need to increase reserves they set aside to pay for future claims. *Nonprofit human service providers*, schools, religious organizations, and municipal entities are just some of the types of entities that are at risk of increased claims alleging they were negligent in hiring or supervising alleged abusers. Two major insurers, Travelers and Chubb, noted on earning calls in 2019 that they are increasing their reserves by over \$50 million in response to [New York's Child Victim's Act](#)⁵. New York and New Jersey passed laws that open a revival window for a specified period of time and / or up to the age of 34-55 for claims against perpetrators and private organizations.

What is the plan for today and the future?

Insurers, insureds/ nonprofit human service providers, brokers, agents, legislators, lawyers and all interested stakeholders must act together to address the problems facing *nonprofit human service providers*. In my opinion, our collective attention should be placed on creating a platform for aggressive risk prevention measures, with the help and input of the insurance industry. The insurance industry retains mountains of data that will allow *nonprofit human service providers* to make better decisions. Risk prevention measures will differ when trying to prevent Auto losses compared to prevention of Sexual Abuse and Molestation incidents. Nonetheless, there is no substitute for aggressive risk prevention. Thorough interview processes that include background screening, drug testing, past employment and educational verification is a critical component of keeping bad actors away from our *nonprofit human service providers*. Creating robust safety audit platforms is another key element that should be mandated in my opinion. I propose creating a Sexual Abuse and Molestation audit platform that could be adopted by the insurance industry as a standard operating procedure. Depending on the answers to the audit, a grade would be given. The grading would serve two purposes. First, the grading would allow an insurer to objectively rate a *nonprofit human service provider*, which would allow them to charge an appropriate rate for the risk. Second, the grade can be used by the *nonprofit human service provider* to create a better and safer organization. Lawyer, Marci Hamilton, founder and CEO of Child USA, shares a similar opinion which was outlined in an article from Leaders Edge in September, 2019⁶. Hamilton opined that insurers should be mandated by states to offer Sexual Abuse and Molestation coverage to *nonprofit human service providers*. Hamilton also thinks that child protection audits should become commonplace. I agree with Hamilton with one exception. If a *nonprofit human service provider* cannot pass an audit or prove that they are taking steps to be able to pass an audit, those *nonprofit human service providers* should not be allowed to take care of those people entrusted to their care. If our society cannot ensure the safety of those that need our help the most, we are in deep trouble. We need to create solutions to the loss problem. Insurance policies are not the answer to this problem. Insurance policies exist to put Insureds back into the position they were prior to a loss. *Nonprofit human service providers* are a huge part of the economic engine in the United States. We do not want them failing and going out of business. We need to create a more efficient way for *nonprofit human service providers* to successfully execute their respective business plans while keeping the people they serve safe. Moreover, we cannot levy additional costs on these organizations. Most *nonprofit human service providers* have dealt with years of inadequate funding. This problem then permeates into the operations of the organization. It materializes through the inability to pay employees a living wage while we expect them to take care of those individuals that need our help the most.

¹ Occurrence Policy: An occurrence-based policy covers losses that happen during the time an Insured has a policy, regardless of when you file a claim. It is designed to protect you against long-tail events - incidents that could cause injury or damage years after they occur.

² Claims-Made Policy: this is a policy that provides coverage that is triggered when a claim is made against an insured during the policy period, regardless of when the wrongful act that gave rise to the claim took place. (The one exception is when a retroactive date is applicable to a claims-made policy. In such instances, the wrongful act that gave rise to the claim must have taken place on or after the retroactive date.)

³ Retroactive Date: this is a provision found in many claims made policies that eliminate coverage for claims produced by wrongful acts that took place prior to a specified date, even if the claim is first made during the policy period.

⁴ Combined ratio is a measure of insurer profitability, calculated by taking the sum of incurred losses and general business costs divided by the earned premiums over the same period.

⁵ Reference: WSJ article from 7/21/19, "Insurers Face Risk of Child Sex-Abuse Claims."

⁶ Reference: Leaders Edge, "Pivot Point," by John Otrompke, September 2019

The State of the Insurance Marketplace for Nonprofit Human Service Providers in 2020

Kevin P. Dougher | Vice President, Partner | Johnson, Kendall & Johnson, Inc.

Johnson, Kendall & Johnson's (JKJ) Solutions

JKJ has made considerable investments in technology and personnel to combat this crisis faced by *nonprofit human service providers*. Two of our most recent investments are specifically geared towards preventing loss before it happens.

I've always been amazed that many of our competitors find it more worthwhile investing significant dollars in post loss resources rather than pre loss risk prevention assets. While post loss claims management and data analytics is a must have (we have a great platform for this at JKJ), it is even more crucial to investigate and adopt the means to prevent losses from occurring. If a loss never occurs, we have less people getting hurt, less lives being ruined and a significantly lower cost of risk for *nonprofit human service providers*. The answer to solving this crisis is to prevent losses from occurring.

Starting in Q1 2020, JKJ will now be able to offer a wider array of safety and risk control services through our own cloud-based risk management center. The risk management center will enable JKJ's *nonprofit human service provider* clients to supplement the risk prevention work that is occurring with JKJ's Loss Prevention Engineers by providing access to a vast library of safety resources, online training modules, and a platform to build behavior-based safety programs.

Additionally, JKJ is bringing on a nationally renowned expert within the *nonprofit human service provider* industry to engage our clients in productive assessments aimed at eliminating Sexual Abuse and Molestation incidents within the workplaces. We will be fully capable of performing Sexual Abuse and Molestation facility inspections, procedural consulting on Sexual Abuse and Molestation prevention, and we will now have a greater knowledge base for Sexual Abuse and Molestation incident management.

Finally, JKJ has expanded its roster of insurance company partners to fill the void of these seismic shifts in the insurance marketplace. Some insurers have completely shut down their *nonprofit human service provider* practice group and others have restricted their appetite so much that they are essentially irrelevant as a solution. Over the last several years, we have brought on four additional insurance company partners with AM Best ratings of A or better. These partnerships will allow JKJ to continue to be a leader in the *nonprofit human service provider* insurance and risk management field. More importantly, these relationships will present opportunities for JKJ clients that otherwise would not have been available.

In closing, JKJ is fully capable of placing our *nonprofit human service provider* clients in the absolute best position for success. The insurance marketplace is changing rapidly. Trust JKJ to ensure the perpetuation of your business as well as the safety of your employees and the individuals that you serve.

JKJ is hosting a Lunch & Learn to explain the benefits of our new Risk Management Center.

Monday, March 9, 2020

12:00 PM – 2:00 PM

Homewood Suites

110 Pheasant Run, Newtown, PA

If you decide after the Lunch & Learn that you would like access to JKJ's risk management center, we will discuss a roll-out plan for your organization.

We encourage clients and prospective clients to join this meeting. Please contact me if you would like to participate.



Kevin P. Dougher

Vice President | Partner

E: kdougher@jkj.com

C: 215-962-9745