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THE NEWS SERVICE OF FLORIDA

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THE CAPITAL, TALLAHASSEE, Mar. 16, 2011....A measure that would cap damages for pain and suffering by children in Florida's child welfare system was approved by a House committee Wednesday after impassioned testimony from both supporters and critics.

Rep. Scott Plakon, R-Longwood, and the House sponsor, told the Health and Human Services Access subcommittee that HB 1019 would reduce "frivolous" lawsuits against agencies with state contracts to provide foster care and adoption services.

That in turn would allow the contractors to put more money toward serving children and less toward liability insurance or attorneys' fees, said Shawn Salamida, the CEO of Partnership for Strong Families, the lead community-based care organization for 13 Northeast Florida counties. "I'd rather take that money and hire two new caseworkers," said Salamida.

Mike Watkins, CEO of another contractor, Big Bend Community Based Care, Inc., said his agency's liability insurance had just been cancelled. The carrier, Watkins said, had told him to expect a 100 percent increase in premiums – and that that was low compared to hikes faced by other CBCs.

"This is probably the greatest threat to community-based care," said Watkins.

"This is a crisis," said Plakon, adding that the Children's Home Society of Florida had recently received notice that its liability insurance would not be renewed.

But opponents said the measure would hurt child victims still more. They invoked the recent tragedy of Nubia and Victor Barahona, the ten-year-old twins who were victims of one of the worst-ever child abuse cases in state history. Nubia Barahona's decomposing body was found in the back of her adoptive father's truck on Feb. 14, even as her brother Victor convulsed from toxic chemicals in the passenger seat. He is recovering from severe burns in therapeutic foster care.

"This is really an attempt, truly, to provide legal protection for those who harm children to an extraordinary degree," said Christina Spudeas, director of the advocacy group Florida's Children First.

"There are kids in (foster) care that are beaten, that are raped, that are beaten and raped again, that are burned over half their bodies, that are unsupervised and left to fall in and almost drown in a pool – that require long-term, lifetime care...extensive surgeries...and mental health help to recover," she said.

The report of an independent panel last week charged Florida's child welfare system with "fatal ineptitude" in the Barahona case.

"The medical bills that Victor has incurred to date are well in excess of several hundred thousand dollars already," said Gary Farmer of the Florida Justice Association, which represents the trial bar and opposes Plakon's bill.

"And we haven't even talked about the emotional distress that little boy will live with all his life," Farmer said. "Under this bill, there would be insufficient insurance to cover those lawsuits."

Plakon's bill would cap awards for pain and suffering at between \$200,000 and \$1 million and lower the amount of liability insurance the agencies must carry from \$1 million to \$500,000.

Economic damages would be capped at \$2 million. The measure would also protect the Florida Department of Children and Families, which has sovereign immunity, from lawsuits against its subcontractors, which don't.

"There's been an issue of late of multiple parties being listed in these lawsuits trying to sort of drag DCF back into the equation," Plakon said, "when all they did was, in good faith, appoint that contract to that community based care agency."

Salamida said his agency had had no lawsuits during its first four years, but in the last two years has had three, with a possible fourth lawsuit "on deck."

"Sometimes it's confusing who does what within our system," Salamida said. "So what we're seeing is that when something tragic or bad happens to a child, everyone that's attached to the case gets named. And the process of going through and sorting out who did what is very time-consuming and costly."

Farmer also pointed to a supporter of the bill, Our Kids, Inc., the community-based care organization in Miami-Dade and Monroe counties that handled Nubia and Victor Barahona's adoptions. Farmer said Our Kids had gross revenues of \$101 million in 2008, while its CEO, Frances Allegra, earns more than \$200,000 with bonuses. Half a dozen other members of the agency's executive team have salaries hovering around \$100,000, Farmer said.

Allegra responded with a statement.

"We are a private, non-profit tasked with running one of the largest, most complex systems in Florida. Our board of community business leaders demand high performance and expect excellence," she said. "Our responsibilities were previously performed by a state employee with a benefits package offering significantly more paid time off, better health benefits and a pension. In addition, we execute our duties, that were previously a state function, using significantly less staff. In return, we expect high performance."

Our Kids would be protected under Plakon's bill, which cleared the committee on an 11-4 vote. Both sides claimed the high moral ground.

"It is helping kids in the most terrible circumstances that many of us on this committee could not even imagine," Plakon said of his bill.

"I think about some of the kids in care whose voices will go unheard," said Derrick Riggins, statewide chair of Florida Youth SHINE, an advocacy group for children who have been in foster care. "Unfortunately, it's not until a lawsuit happens that accountability is brought up."

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