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SEXUAL ABUSE LITIGATION & COVERAGE CONFERENCE

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CHALLENGES IN JUVENILE TREATMENT FACILITIES CASES



Elizabeth Hanke
Managing Director,
Alvarez & Marsal



Amber Long, Esq.
Levy Konigsberg LLP



John Manly, Esq.
Manly, Stewart, Finaldi & Thom

LEVY KONIGSBERG

Challenges in Juvenile Treatment Facilities Cases



Amber Long
Levy Konigsberg LLP

Children in Mental Health Facilities are Some of the Most Vulnerable to Abuse

Obtaining Documents from Such Facilities can Bring Unique Challenges

Amber Long
Levy Konigsberg LLP

Incidents of Prior Abuse within the Facility are Discoverable

Just a few examples…

T.B. v. Archdiocese of New York, 232 N.Y.S.3d 20 (1st Dept. 2025)

Documents related to the Archdiocese's response to claims of sexual abuse by clergy members discoverable; names of victims of other perpetrators may be redacted, though identities of victims of same perpetrator must be provided

Black v. Archdiocese of New York, 252 N.Y.S.3d 732 (2nd Dept. 2026)

Documents concerning sexual abuse perpetrated at children's home by persons other than the perpetrator discoverable

Harmon v. Diocese of Albany, 167 N.Y.S.3d 601 (3rd Dept. 2022)

Documents related to priests on diocese's credibly accused list discoverable

The Quality Assurance Privilege

Established by the Court of Appeals in *Katherine F. v. New York*, 702 N.Y.S.2d 231 (1999)

Applies to Psychiatric Facilities

Education Law § 6527(3) and Mental Hygiene Law §29.29, when read in tandem, exempt from disclosure incident and investigation reports generated in response to allegations of sexual abuse by an employee.

This sounds really bad for plaintiffs trying to obtain documents about incidents of sexual at mental health facilities…

That’s How Defendants May Present It

Refuse to provide any documents related incidents of sexual abuse

Argue to the courts that privilege covers every document on the topic of incidents of sexual abuse

Object to categories of testimony in corporate representative deposition related to the topic of incidents of sexual abuse



There is Nuance to the Privilege

1. It protects the process, not the topic
2. The burden is on the facility to prove the privilege applies
3. A blanket affidavit stating the documents were generated for quality assurance will not suffice
4. There are exceptions to the privilege
5. A privilege log and *in camera* review is required

Privilege protects the process, not the topic

Matter of Subpoena Duces Tecum to Jane Doe, 99 N.Y.2d 434 (2003)

Analyzing a similar federal privilege – applying analysis used in assessing quality assurance privilege under CPLR

A facility may not create a privilege where none would exist by assigning duties to a quality assurance committee

Privilege encompasses reports generated by or at the behest of quality assurance committee for quality assurance purposes

Where a quality assurance committee simply duplicates existing records, no privilege will attach



Reinforced by Appellate Division Holdings



Newman v. Mount Sinai Medical Center, 169 N.Y.S.3d 262 (1st Dept. 2022) "[T]he only documents covered by that privilege are those generated in connection with a quality assurance review function..."

Kivlehan v. Waltner, 827 N.Y.S.2d 290 (2nd Dept. 2007) "Records simply duplicated by a quality assurance committee are not necessarily privileged."

The burden of proof is on the party asserting the privilege to establish that the documents sought were prepared in accordance with the relevant statutes



Kivlehan v. Waltner, 827 N.Y.S.2d 290 (2nd Dept. 2007)

Marte v. Brooklyn Hosp. Ctr., 779 N.Y.S.2d 82 (2nd Dept. 2004)

Newman v. Mount Sinai Medical Center, 169 N.Y.S.3d 262 (1st Dept. 2007)

The burden of proof is on the party asserting the privilege to establish that the documents sought were prepared in accordance with the relevant statutes



Kivlehan v. Waltner, 827 N.Y.S.2d 290 (2nd Dept. 2007)

The party asserting the privilege "is required, at a minimum, to show that it has a review procedure and that the information for which the exemption is claimed was obtained or maintained in accordance with that review procedure."

Assertions or affidavits that simply recite that the documents were prepared for quality assurance purposes are not sufficient



Robertson v. Brookdale Hosp. Med. Center, 59 N.Y.S.3d 485 (2nd Dept. 2017)

DeLeon v. Nassau Health Care Corp., 112 N.Y.S.3d 579 (2nd Dept. 2019)

Newman v. Mount Sinai Medical Center, 169 N.Y.S.3d 262 (1st Dept. 2007)

Party statements are an exception to the privilege

Education Law § 6527 contains an exception allowing for discovery of statements made by any person present at a quality assurance meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting





This could weigh on the side of naming perpetrators as parties

Statements of high-ranking CEOs or may be party statements

Spett v. President Monroe Bldg. & Mfg. Corp, 19 N.Y.2d 203 (1967) – Statements of an agent within the scope of their responsibility are admissible against the principal

Defendants have to create a privilege log and the Court will need to review

CPLR 3122(b)

Must identify type, date, subject matter of document – No exceptions in the Rule

Must Identify the Speaker in Documents

It is Defendant's burden to show no statements by parties, and they can't meet this burden without identifying speakers.

See, e.g., *Gabbe v. Eliot at Erie Sta.*, 254 N.Y.S.3d 200 (2nd Dept. 2026)

You Don't Have to Take Their Word for It

Plaintiffs and Courts should require a detailed privilege log so that the nuances of the privilege and its exception can be applied

Obtain Documents from Other Sources

Office of Mental Health and The Justice Center

Your Client

Local Police and Prosecutor's Offices



CALIFORNIA

Reams of documents related to L.A. County sex abuse cases never turned over, lawyers say



Girls inside Camp Scott in 2015 wait for instructions during a lunch break. (Barbara Davidson / Los Angeles Times)



By Rebecca Ellis
Staff Writer | Follow

April 21, 2025 Updated 5:25 PM PT

TODAY'S DISCUSSION

Agenda

01

Case Study

History of the New Hamshire Youth Development Center and the resulting settlement fund

02

Government vs. Non-Government Risk-Financing

Insurance, self-insurance, and why risk pools are not insurance

03

Claim Valuation

How defendant resources shape value, and how benchmarking builds consistency

04

The Need for Advisory Roles

Conflicts of interest, and turning scattered exposure into a coherent financial picture

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01

Case Study

New Hampshire Youth Development Center

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YDC Background and New Hampshire SOL

History of Institution

- Opened in 1858 as a state institution; coeducational from its founding.
- Generally served children ages 13–17, although historical accounts report younger residents.
- Operated under state control throughout its history.
- Intended to promote reform and rehabilitation rather than solely punish misconduct.
- Youth committed for a range of behaviors - theft, truancy, running away, and disobeying parents; some cases fell under “Children in Need of Services.”

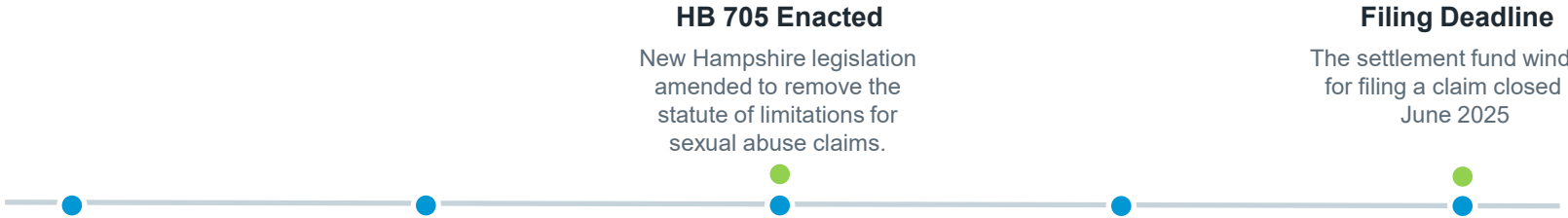
Legislative and Legal Reforms

- 1994: NH Supreme Court ruled the discovery rule could apply to claims involving repressed memories (McCollum v. D’Arcy).
- 2005: Legislature established a special deadline to report childhood sexual abuse claims; 7 years after turning 18 or 3 years after discovering the injury/cause, whichever was later.
- 2008: Legislature extended the age-based filing period from 7 to 12 years after the victim’s 18th birthday.
- 2020: Under HB 705, actions involving specified sexual offenses/incest to be filed “any time,” effective Sept 18, 2020.
- 2025: NH Supreme Court ruled HB 705 could not revive claims with expired filing deadlines; limited retroactive application.

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Context & Key Milestones

Manchester, NH — formerly the Youth Development Center (YDC), later renamed the Sununu Youth Services Center



2017
David Meehan Discloses Abuse

Former resident's disclosure of sexual abuse triggers public investigation.

2019
State Investigation Begins

The Attorney General's Office announces a comprehensive investigation into allegations.

2020
Meehan Files Civil Lawsuit

Meehan sues the state of New Hampshire; prompts a wave of additional lawsuits from former residents.

2022
Settlement Fund Created

The Legislature creates a claim administration and settlement fund to compensate victims; initial $100M appropriation.

2024-26
Verdicts, Settlements and Updates

Meehan receives $38M verdict; $10M settlement reached with Michael Gilpatrick in 2025; fund administrator change in 2026

HB 705 Enacted

New Hampshire legislation amended to remove the statute of limitations for sexual abuse claims.

Filing Deadline

The settlement fund window for filing a claim closed in June 2025

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The Settlement Fund & Financial Outcomes

In 2022, the Legislature created the YDC Claims Administration and Settlement Fund as an administrative alternative to a full civil trial.

425
Claims resolved with settlement awards

$239.3M
Total value of resolved awards

1,689
Claims pending review

~$1B
Potential remaining settlement cost

Fund status as of March 31, 2026

Outside the Fund: Civil Verdicts

Meehan jury verdict (2024): $38M awarded; state argues a $475K statutory cap applies — still before the NH Supreme Court as of Sept 2026.

Gilpatrick settlement (2025): $10M, separately appropriated by the legislature.

How It's Funded — No Insurance

State appropriations only: $100M (2022, reserve account) + $60M (2024, surplus) + $5M (FY25 budget) + $20M (FY26 budget) = $185M. Additional $20M funding approved July 2026.

No insurance for these claims, leaving taxpayers to bear the cost directly.

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02

Government vs. Non-Government Risk-Financing

Who pays, and how

01 Case Study | **02 Risk-Financing** | 03 Claim Valuation | 04 Advisory Roles

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Two Different Starting Points

Facilities Run By Non-Government Entities

- Commercial insurance and/or self-insurance reserves often available
- Reserves are actuarially estimated using filed claims, past settlements, and claims not yet filed.
- A claims process exists before litigation starts; insurers or in-house claims teams investigate and value claims consistently from day one.

Facilities Run By Government Entities

- Largely self-insured; costs fall on public through reserves, appropriations, bonds, or dedicated settlement funds
- Legislative caps can establish monetary limits to liability
- Washington: self-insured through a state Liability Program funded by agency premiums, now running a deficit.
- California: largely self-insured and/or risk pool (PRISM: ~ 90% counties are members, LA County is not included in pool)

$475K New Hampshire legislative cap per claimant on all claims arising out of any single incident against any agency for damages in tort actions.

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Risk Pools Are Not Insurance

How a Risk Pool Functions

- Can help a defendant locate available coverage or facilitate payment logistics.
- Does not transfer risk the way a true insurer does; no underwriter is pricing and absorbing the exposure.
- Changes negotiation posture: no insurer-driven reserving, documentation standard, or settlement authority sitting behind the defendant.
- Changes case valuation: plaintiffs and defendants are negotiating against a public balance sheet and political process, not an actuarial claims unit.

No Insurer → Public Debt Instead

LA County's $4B+ settlement is financed through: bonds, reserve/ "rainy day" fund draws, budget cuts.

Debt service projected to continue through fiscal year 2050–51.

Facilities in Settlement: Juvenile Halls (e.g., Centra, Los Padrinos), Probation Camps (e.g., Kilpatrick, Scott, Scudder), MacLaren Children's Center, and foster / group homes.

New Hampshire's YDC settlement is financed through: reserve / "rainy day" fund draws, general funds, budget allocations.

Existing installment payments for resolved claims were scheduled through state FY2035 as of March 31, 2026; future awards will add to outstanding obligation.

Bottom line: without true risk transfer, exposure concentrates directly on current and future taxpayers rather than being spread through premiums.

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03

Public Claim Valuation

Same facts, different defendant

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Same Facts, Different Defendant, Different Value

Individual Abuser

Value is capped by that person's personal assets (often minimal).

Non-Government Entity/Company

Balance sheet + insurance layers open access to far deeper resources; Chapter 11 / 524G bankruptcy option

Government Entity

Deep nominal resources, but fiscally and politically constrained; often paid over decades.

PUBLIC SYSTEMS ARE NOW IN FISCAL CRISIS OVER THIS

$1.7B

Washington's self-insurance fund deficit, driven largely by legacy DCYF/youth-facility claims

$4.8B+

LA County exposure financed via bonds, reserves, and cuts through FY2050–51

$55M → $20M

NH's 2026 funding request vs. what lawmakers actually approved

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Benchmarking: Building Consistency Into Payouts

Benchmarking uses a defined set of prior, similarly-valued claims to guide what a new claim with a comparable fact pattern should receive, bringing insurer-style consistency to public settlement processes.

1
Base Award

Set by category of abuse alleged

›

2
Frequency Multiplier

Adjusts for number / recurrence of incidents

›

3
Aggravating / Mitigating Factors

Case-specific adjustments, up or down

›

4
Final Award

Within the range for that category of abuse alleged

New Hampshire's statutory maximums by category:

Claim Category	Statutory Maximum
Egregious sexual abuse	$2.5 million
Sexual abuse (incl. combined claims)	$1.5 million
Other abuse, no sexual-abuse claim	$250,000
Isolated confinement	$300/day, capped at $100,000

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Burden of Proof

YDC Guideline for Valuing Claims for Settlement Purposes, Issues of Credibility Pg 16:

> Understanding these facts about victims, if the totality of the circumstances surrounding a Claimant's description of events (which may include how and when details were recalled and disclosed by Claimant, as well as statements made by persons other than Claimant, comparisons with information contained in records, and any other matters typically considered as bearing on credibility) indicates a Claim is based on statements lacking in credibility, a Claim may be denied or the amount reduced, on that basis.

YDC Guideline for Valuing Claims for Settlement Purposes, Problems of Proof Pg 17:

> The degree of proof needed to support a Claim, an element of a Claim, or a defense will depend upon the nature of the Claim and should generally comport with what proof might be reasonably expected to exist in each instance. A Claim may be denied, or the amount reduced where reasonably expected proof is lacking to such a degree that it calls into question the legitimacy or veracity of the Claim or element.

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04

The Need for Advisory Roles

Independence and financial clarity

01 Case Study | 02 Risk-Financing | 03 Claim Valuation | **04 Advisory Roles**

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Conflicts of Interest Are a Real, Underexamined Risk

Government entities often lack the institutional separation a private insurer imposes by default, creating room for conflicts that go unexamined absent outside review.

- **Personal ties to facility leadership**
  Counsel, officials with family or close personal relationships to the facility's leadership raises independence questions that are easy to miss without a dedicated review function.

- **Who controls the settlement decision**
  When the body approving awards has a stake in minimizing liability, the independence of that approval step itself becomes a live issue.

A Real Governance Example: New Hampshire

In 2025, the state budget shifted authority over the YDC settlement fund's administrator from the judicial branch to the executive branch and gave the Attorney General's Office power to reject proposed awards. The prior administrator objected that this undermined independence and stepped down; claimants' litigation challenging the change was dismissed at trial in Jan 2026 and is on appeal.

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Independent Claim Review

Third-party advisors provide an independent layer of review to help validate claims, identify discrepancies, and support consistent, defensible settlement decisions.

Consistency in Valuation

- Apply standardized review procedures and approved valuation guidelines across claims, documenting the evidence considered, rationale for decisions, and exceptions requiring further review.

Verification and Transparency

- Cross-check claimant eligibility, facility residency, alleged abuse dates, staff employment records, and other available documentation to establish a factual timeline.
- Maintain an auditable review trail, independent quality checks, and reporting on discrepancies to support oversight.

Protection of Claimants and Public Funds

- Distinguish genuine documentation gaps from potential fraud; help prevent improper payments without unnecessarily delaying eligible claims.
- Identify duplicate submissions, conflicting timelines, and unusual claim patterns before awards are finalized.

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Turning Scattered Exposure Into a Financial Picture

Modeling aggregate liability and advising on structural responses (settlement funds, damages caps, financing vehicles) isn't traditional in-house government expertise.

Claims Forecasting

Standardizing claim data, scoring severity, and projecting future claim counts and indemnity payments — the analytical backbone behind any funding decision.

Financing Structure

Translating a claims forecast into an actual funding and modeling the long-term debt-service impact.

Exposure Projection

Independent actuarial or administrator estimates of total remaining liability, used to inform legislative funding and policy decisions.

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What Does the Future Look Like?

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