

## Claims Process for Administration of the YDC Settlement Fund

### Introduction, Preface and Scope

1. The General Court of New Hampshire has found that the Attorney General's investigation into abuse at the state's youth development center in prior decades has identified a population of New Hampshire citizens with potential claims against the state. Wishing to acknowledge those potential claims and the suffering which has been endured by the victims of such abuse, the state has established a trauma-informed, victim centered alternative to litigation for the efficient, fair and just resolution of such claims. This Claims Process and the incorporated documents, including the Guidelines for Valuing Claims for Settlement Purposes ("Valuation Guidelines"), have been prepared consistent with and to effectuate that purpose.
2. The Claims Process set out here has been developed pursuant to Section 2 of H.B 1677, *An Act relative to the administration and settlement of claims of abuse at the youth development center and making an appropriation therefor* (the "Act"), which section is codified at RSA 21-M:11-a. References in the form "Subsection x" are to subsections of RSA 21-M:11-a (the "Statute").
3. The Claims Process governs the submission, administration, settlement and resolution of claims of abuse at the youth development center (the "Claims Process"). Aspects of the Claims Process not covered by this statement shall be governed by RSA 21-M:11-a. In any case of conflict between this Claims Process and RSA 21-M:11-a, the Statute shall govern.
4. This Claims Process was approved by the Joint Fiscal Committee on \_\_\_\_\_, 2022 and became effective that day. This Claims Process is binding upon the AG designee and the Administrator. This Claims Process may be revised from time to time pursuant to Subsection IV(b) of the Statute. The most up-to-date version of the Claims Process can be found on the websites of the Attorney General and Administrator.

### Table of Contents, Organization and Preliminary Matters

5. This Claims Process statement is organized, after this preliminary part, as follows:

Section 1 describes the process for filing and submitting a claim with the Administrator;

Section 2 describes how the AG designee will evaluate a claim and provide a response;

Section 3 describes the Investigation Process;

Section 4 describes the Claimant's options after the AG designee's response is received;

Section 5 describes how a Resolution Proceeding will work;

Section 6 describes the Claimant's options for receiving an award.

6. The following documents are attached hereto and incorporated as part of this Claims Process:
  - a. Exhibit A – Guidelines for Valuing Claims for Settlement Purposes;
  - b. Exhibit B – Claim Form, with accompanying Claim Calculation Worksheet; and
  - c. Exhibit C – Glossary (definitions).<sup>1</sup>
7. Additional forms that may be developed will be made available on the websites of the Attorney General and Administrator
8. Definitions:
  - a. Reference should be made to the Glossary (Exhibit C) for definitions of terms used in this Claims Process, the Valuation Guidelines and the Claim Form.
9. Confidentiality and Privacy
  - a. Records of the Claims Process and Settlement Fund administration are exempt from disclosure under the Right-to-Know Law, RSA 91-A:5(XIII), except for settlement agreements and, after a claim has been finally resolved, such other records the release of which would not constitute a violation of other provision of law or an unwarranted invasion of a claimant's privacy.
  - b. The Administrator and the AG designee shall respect the privacy of claimants and the confidentiality of proceedings under this Claims Process.
10. Initial Duties of the Administrator.
  - a. The Administrator shall maintain a website publicizing the Claims Process and providing the Claim Form, and such other forms, documents and

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<sup>1</sup> [ Note: The Glossary will be compiled after other documents are finalized.]

information as may be helpful and informative to actual or potential claimants.

- b. No later than November 1, 2022, the Administrator shall publish the notice provided for in Subsection VI of the Statute. The Administrator shall consult with the AG designee on the contents and wording of the notice.
- c. The Administrator shall administer the settlement fund and claims process as set out in this Claims Process and the Statute.
- d. The Administrator shall assign a claim number and, as needed, a resolution proceeding number to each claim received. The administrator shall maintain a docket, including the name of the claimant, claim number, claimed amount, date of initial submission of the claim, date of determination of administrative completeness of the claim, date of filing of any related civil litigation (and the docket number of the litigation), date of receipt of the AG designee's position regarding the claim, date of referral for investigation, if applicable, date a resolution proceeding is requested, if applicable, date of resolution proceeding, date of disposition of the claim, disposition of the claim, including the amounts paid, if any, and such other information the Administrator deems appropriate. The docket shall be shared with the AG designee, but shall not be released or publicly available without redaction or anonymization to protect the confidentiality and privacy of claimants.
- e. The Administrator may be removed by the Supreme Court if, after a request for removal received from the Attorney General or claimants' counsel, or upon the court's own motion, the court determines that good cause for removal exists.

#### 11. Guidelines for Valuing Claims for Settlement.

- a. The Guidelines for Valuation of Claims for Settlement Purposes (the "Valuation Guidelines"), attached hereto as Exhibit A, are intended to ensure the fair and uniform valuation of claims, and that claims of similarly situated claimants are valued similarly. The Valuation Guidelines contain step by step instructions and tables for valuing and evaluating claims of sexual abuse and physical abuse. The tables group claims by type or category of abuse claimed, provide a base award amount, and include frequency multipliers and enhancements for various aggravating factors, thereby enabling consistent calculation of an amount for any claim. The base categories, multipliers and enhancements take into consideration factors including the nature and character of the acts of physical abuse and sexual abuse; the frequency and duration of those acts; and various aggravating factors.

- b. The Valuation Guidelines also provide for consideration of mitigating factors that may be relevant to the review and valuation of submitted claims by the AG designee and by the Administrator in the determination of an award amount.

## **Section 1: Submission of Claims to the Administrator**

### 12. Submission of a claim

- a. Any living former YDC resident who was personally subjected to sexual or physical abuse may file a claim for that abuse. If a living former YDC resident has a guardian or conservator, his or her guardian or conservator may file a claim on his or her behalf.
- b. Claims may be filed at any time from January 1, 2023 to December 31, 2024. Claims will not be accepted or reviewed if not postmarked or submitted and received by midnight December 31, 2024.
- c. In order to submit a claim, and thereby become a claimant, a living former YDC resident (or their guardian or conservator as the case may be) must complete a Claim Form, including accompanying documents, sign it under oath or pain and penalty of perjury, and submit it to the Administrator as provided on the Claim Form. The claimant must complete and submit all required documentation.
- d. Claims may be submitted electronically, by mail or by hand delivery to the address provided on the Claim Form.
- e. A Claim Form must be accompanied by copies of all available required documentation, and any corroborating documentation and information available to the claimant. If required or helpful documents are held by a third party, the claimant must obtain copies of such documents and include them with the Claim Form.
- f. A claimant may, but need not submit a copy of his or her Resident File with his or her claim if the claimant received the Resident File through the Office of the Attorney General.
- g. The AG designee shall make arrangements for the availability and distribution of blank Claim Forms and required forms, as well as necessary instructions, upon request, on its website, in the community, and with the assistance of the Department of Corrections, in correctional facilities.
- h. Because the sexual abuse guidelines contemplate the use of force inherent in certain of the offenses and enhancements, no claimant may file a claim for, nor receive an award for, both sexual abuse and physical

abuse unless the acts of physical abuse and sexual abuse were completely separate from and unrelated to each other.

13. Necessary or Helpful Documentation

- a. A claimant must provide all necessary and helpful documents and information available to him or her.
- b. If a claimant is aware of the existence of, but does not possess copies of, necessary or helpful documents or information held by a third party, claimant shall obtain those documents for submission with his or her claim. If the claimant is unsuccessful in obtaining records, he or she must provide a statement detailing his or her efforts to do so, and provide a release allowing the AG designee to request copies of such documents or information.
- c. Necessary documentation for a claim:
  - i. Properly completed and executed Claim Form and Claim Calculation Worksheet;
  - ii. Completed W-9 forms for the claimant and, if the claimant has an attorney, for the attorney;
  - iii. Any fee agreement between the claimant and any attorney;
  - iv. An attorney fee affidavit detailing the time and work the attorney expended on the claim (which may be supplemented after any investigation or resolution proceedings in the particular claim);
  - v. A fully executed Motion to (or Notice of) Stay, which the Administrator shall promptly provide to the attorneys for filing in any civil action the claimant may have brought seeking damages for any act of sexual abuse or physical abuse at YDC for which the claimant is seeking compensation in his or her claim, or proof that such a motion or notice has already been filed;
  - vi. Copy of court order appointing guardian or conservator (if applicable); and
  - vii. Copy of identification documents.
- d. Helpful documentation for a claim
  - i. All available medical, psychiatric or counseling records supporting a claimed injury or the extent thereof;
  - ii. All available court or other records evidencing or corroborating dates of confinement to YDC, or the claimed abuse;
  - iii. Any other document, record, photograph or information relevant to determination of the dates the claimant was a resident of YDC, identification of perpetrators, or determination of the nature, severity and circumstances of the abuse suffered by claimant

14. Evaluation of completeness of claim by Administrator pursuant to Subsection VIII(a) & (b) of the Act
- a. The administrator shall acknowledge receipt of the claim in writing and provide a copy to the AG designee within 30 days of receipt.
  - b. Within 60 days of receipt of the claim, the Administrator shall review the claim and determine whether it is complete as submitted or, if not, what additional information is required. The Administrator shall notify the claimant and the AG designee of his determination and of what additional information is required (if any). Additional information may include documents and other records or further explanation of information supplied on, or omitted from, the Claim Form as initially submitted.
  - c. If additional information is required, the claimant shall provide the information within 90 days of being notified that additional information is required unless that deadline is extended for good cause by the Administrator. A claim may be denied if requested information is not provided.

## **Section 2: Evaluation of Claim by AG designee**

15. Evaluation of a complete claim by AG designee
- a. The AG designee will evaluate each claim deemed complete by the Administrator as provided in Subsection VIII of the Statute and the Valuation Guidelines (Exhibit A).
  - b. The AG designee shall indicate its position with regard to a claim to the claimant and Administrator within 30 days of notice of completeness, unless that deadline is extended for good cause by the Administrator. The AG designee may agree or disagree with the claim in whole or in part, and shall indicate whether he or she believes the claim should be referred to an investigator.
  - c. In those cases in which the AG designee does not agree with a claim in whole, he or she shall provide the Administrator with a copy of the claimant's Resident File (if not provided by claimant), and may provide the Administrator with any other documents or information which the AG designee considers to be helpful in understanding or justifying the position of the AG designee. The claimant shall receive copies as well.
  - d. In those cases in which the AG designee does not agree with a claim in whole, and simultaneously with his or her indication of position with regard to the claim to the Administrator and claimant, the AG designee may separately and confidentially communicate with the claimant regarding potential discussion of or terms of settlement of the claim. Any such

communication and ensuing discussions shall not be disclosed to the Administrator (unless the AG designee and claimant reach agreement, in which case that fact and the agreed claim value shall be disclosed).

- e. The AG designee, in evaluating a claim, may provide an adjusted proposed claim amount, in its position with regard to the claim to the Administrator and claimant, or in any separate confidential communication with the claimant.
- f. The AG designee may refer the claimant to the proper authorities for possible criminal prosecution at any time if he or she determines that a claim is fraudulent, or that the claimant willfully made one or more material false statements.

### **Section 3: Investigations**

#### 16. Investigation of claims pursuant to Subsection VIII(d), (e) &(f)

- a. The Administrator may, in exercise of his or her independent judgment, refer a claim for investigation upon receipt of the AG designee's position. The Administrator may direct the investigator to focus on a particular aspect of the claim to obtain further information or verification, in which case the investigation shall be limited in scope to those identified issues.
- b. Any investigation shall be conducted consistent with the provisions of Subsection VIII(d), (e) & (f) of the Statute.
- c. Investigations shall be conducted by an Investigator and a report provided, as set forth in the Statute.

### **Section 4: Claimant's Options following AG Designee's Position**

#### 17. Notifications to claimants

- a. In those cases where the Administrator does not refer a claim for investigation, or upon receipt of the AG designee's revised position indication in those cases where an investigation is undertaken, the Administrator shall notify the claimant of his or her options.
- b. The claimant has three options: (1) to accept the AG designee's position or revised position, as the case may be, (2) to request the Administrator decide (resolve) the claim, or (3) to withdraw the claim from further processing.
- c. The Administrator shall maintain and make available a list of attorneys willing to consult with the claimant regarding these options.

- d. The claimant shall respond within 30 days advising the Administrator of which option the claimant elects. If the claimant does not respond, the Administrator may assume the claimant accepts the AG designee's position or revised position, as the case may be, and make an award in accordance therewith.
- e. The Administrator shall consult with the AG designee on the contents and wording of all such notices.

### **Section 5: Administrator's Resolution Proceedings**

#### 18. Resolution of claims pursuant to Subsection IX of the Statute

- a. When a claimant requests that the Administrator decide the claim, the Administrator shall schedule the claim for a resolution proceeding.
- b. The Administrator shall provide the claimant with a Waiver Form and appropriate related documents, which may include releases, waivers, stipulations of dismissal, or other documents, which must be executed by claimant and claimant's attorney, if any, and returned. If a fully executed Waiver Form and related documents are not returned to the Administrator in advance of the scheduled resolution proceeding, the proceeding will be cancelled.
- c. The Waiver Form and related documents shall be consistent with the provisions of Subsection IX(a) of the Statute, and shall expressly preserve the right to pursue individual perpetrators as described in Subsection IX(a) of the Statute. The content and language of the Waiver Form and related documents shall be approved by the AG designee.
- d. Resolution proceedings shall be scheduled, to the extent practicable, in the order of receipt of claims, also giving consideration to the period of time for which litigation may have been pending prior to submission of the claim. Consideration shall also be given to efficiency in a prison docket.
- e. Resolution proceedings shall take place within New Hampshire, though parties and witnesses may participate by telephone or video from within or outside New Hampshire. All witnesses and claimants shall be sworn and their testimony taken under oath.
- f. The Administrator may require written submissions, additional documents or information, or answers to specific questions in advance of the scheduled proceeding.
- g. Claims may be resolved by submission on written submissions, through an evidentiary hearing or oral argument. No hearing shall be scheduled to last more than three hours. Proceedings, including hearings and

arguments, shall be conducted in a victim-centered, trauma-informed manner to the greatest extent possible.

- h. The claimant shall be entitled to the assistance of an advocate in any resolution proceeding. Claimant's counsel, if any, may attend and participate in any hearing.
- i. Within 30 days of the conclusion of the proceeding, or receipt of any information or documentary materials requested by the Administrator during the proceeding, the Administrator shall issue a written decision on the claim. The Administrator's decision shall be final and non-appealable, subject only to correction of mathematical mistakes or miscalculations.

#### 19. Prison Docket

- a. Because a significant number of claimants may be incarcerated, the AG designee shall explore with the responsible officials of the Department of Corrections the development of a process for efficiently conducting interviews and investigations and holding hearings in appropriate institutions.
- b. The Administrator shall cooperate in conducting hearings and administering claims in any such prison docket that may be instituted.

### **Section 6: Options for Receipt of Awards**

#### 20. Payment of claims

- a. Upon rendering of final decision to approve payment of any part of a claim, receipt of notice that the claimant and the AG designee have agreed upon a compromise of the claim, or notice that the claimant accepts the position or revised position of the AG designee, the Administrator shall notify the AG designee of the amount to be paid, and of any portion of the amount that the Administrator has determined should be paid to claimant's attorneys.
- b. The AG designee shall, promptly upon receiving notification of a final decision to approve payment of any part of a claim, request funding to pay the approved claim amount from the Department of Revenue Administration.
- c. Upon receipt of the requested funding from the Department of Revenue Administration, and after verifying that a fully executed legal release of claims was executed at the inception of the resolution proceeding by the claimant, the AG designee shall make payment of the approved amount to the claimant and/or counsel.

- d. No payment may be made to or on behalf of any claimant without verifying the existence of a fully executed Legal Release from the claimant.
- e. A claimant may request that an award be paid under a qualifying structured settlement award, or may request that an award be paid in annual installments over a period of up to 10 years, or decline a determination that an award should be paid in such annual installments, pursuant to Subsection XI of the Statute.

21. Attorney's Fees and Costs

- a. The Administrator may approve requests for fees and costs of attorneys who represent claimants in proceedings before the Administrator, to be paid out of the award to the Claimant. The Administrator is not required to approve any request in full or part.
- b. The Administrator shall not approve any fee request that is not reasonable. In determining whether a request is reasonable, the Administrator may consider factors including the amount of time and effort expended in representation, whether the claim was settled by agreement between the claimant and AG designee, whether there was an investigation or resolution proceeding in consideration of the claim, any efficiencies of scale the attorney may have achieved in representing claimants, the factors set out in N.H. Rule of Professional Responsibility 1.5, and any additional factors the Administrator shall consider pertinent.
- c. In no event may the Administrator approve attorney's fees in excess of 33 1/3 of the amount awarded.
- d. No award of attorney's fees shall be made without the filing of an appropriately detailed attorney fee affidavit.
- e. When the Administrator provides notice to the AG designee of the final decision to approve payment of any part of a claim, the Administrator shall notify the AG designee of the total amount approved and of the portion of that amount that shall be paid to claimant's attorney as attorney's fees.

22. In no case may an award to a claimant exceed \$1,500,000 for sexual abuse or \$150,000 for physical abuse, even if application of the base award amount and various applicable factors and enhancements might yield a claimed award amount higher than the applicable cap.

Approved by the Joint Fiscal Committee, \_\_\_\_\_, 2022