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Administrator

Claims Administrator's General Instructions & Guidance Resolution Proceeding Stage

These General Instructions and Guidance are intended to give understanding on how Resolution Proceeding stage will help facilitate resolution of claims under the YDC Settlement Fund, in furtherance of the *Claims Process for Administration of the YDC Settlement Fund* (“*Claims Process*”), and the *Guidelines for Valuing Claims for Settlement Purposes* (“*Guidelines*”).

The Administrator may revise the process if operational efficiencies or process improvements are identified. Any such decisions will be made in line with the YDC Settlement Fund Statute, the *Claims Process*, and the *Guidelines*.

GENERAL FRAMING

- The purpose of a Resolution Proceeding with the Administrator is to resolve claims filed in the YDC claims process in those instances where they were not resolved through mutual agreement with the Attorney General Designee (AG Designee).
- The Administrator will conduct Resolution Proceedings in a trauma-informed and victim-centered manner to the greatest extent possible and in a fair and efficient manner for reasonable resolution of claims.
- The Resolution Proceeding is not a litigation process (such as a deposition for civil discovery) and is not like a court trial.
- After a selection for a resolution proceeding is received, Claims Administration staff will send a Scheduling Notice with date for a hearing (if elected) and timetables for pre- and post-hearing submissions.
- The Administrator may request that the Claimant and/or AG Designee provide additional information during the resolution proceeding stage.
- The Administrator will evaluate and decide claims based on information provided, including -
 - claim packet submissions filed by a Claimant
 - information and materials that the parties have exchanged
 - testimony under oath of the Claimant and witnesses (if any) at a Resolution Proceeding hearing if one occurs
 - memos and materials submitted by the Claimant and the AG Designee
- The Administrator will rely on the claim record provided when evaluating the claimant's testimony in light of the totality of the claim record and advocacy of each side, in order to provide an independent evaluation of the claim.

- A Notice of Record Closure will be issued once the Administrator determines no further information is necessary to provide an independent evaluation of the claim.
- The Administrator will provide his written decision no later than 30 days from the Record Closure.

CONFIDENTIALITY

- **Resolution Proceedings, including hearings, are confidential and not public.**
- The time, date and location of Resolution Proceeding hearings are CONFIDENTIAL.
- Attendance to hearings is limited such as listed below:
 - the Claimant, the Claimant’s lawyer and staff, the Claimant’s support person or victim advocate
 - any witness(es) the Claimant selects to provide testimony under oath, if necessary for the Administrator’s evaluation
 - the AG Designee or representative(s)
 - the neutral Administrator, minimal staff needed for conducting a hearing
 - a trauma-informed professional assisting the Administrator.

SAFETY AND SECURITY

- The Administrator considers safety and security at resolution proceeding hearings of the utmost importance to claims process.
- The physical and mental wellbeing of the claimants involved in this process and that of all professionals involved needs to be considered first and foremost and is the foundation of trauma-informed and victim-centered resolution proceedings.
- *Administrator’s Notice on Safety, Security & Impairment at Resolution Proceedings* identifies instructions for law firms that host a resolution proceeding hearing (RP Host). Proceedings may be conducted entirely remotely when appropriate and without prior notice in unique circumstances.
- Above all, it is very important for a Claimant to receive emotional and mental health support. There is a list of resources provided on the Administrator’s website.

SCHEDULING NOTICE

- In the event a claimant selects a Resolution Proceeding, Claims Administration staff will issue a Scheduling Notice to identify a hearing date, time and location (if that is the RP type selected by a claimant)
- The Scheduling Notice also will identify deadlines for submissions to the Administrator (such as questionnaires, memos and supplemental documents for the claim packet) and for confirming information about special circumstances and logistics for a resolution proceeding hearing.
- Timetables identified in a Scheduling Notice are meant to facilitate timely and efficient processing to reach final resolution.

- The Administrator has discretion to implement and reasonably adjust process and timetables of a Resolution Proceeding as appropriate to fit the unique needs of a claim.
- General timetables are identified on the Administrator’s website and specific deadlines will be identified in the Scheduling Notice for a specific claim. A Scheduling Notice sample showing general timetables is available upon request to Claims Administration staff.

REQUESTS FOR EXTENSIONS OR POSTPONEMENT

- Requests for extension of time for providing submissions to the Administrator or postponement of a scheduled hearing must be sent to the Administrator as soon as practicable, with reasoning showing good cause and a requested extension date. It is helpful to know if the parties mutually agree to the request.
- For extensions grounded in good cause, the Administrator may provide additional time for *supplements to the claim record* but generally not later than 30 days in advance of a scheduled Resolution Proceeding hearing date. There needs to be a written explanation showing why the party was unable to provide such supplemental information or documentation at an earlier time in the claims process.
- Delays may cause inefficient processing, unnecessary complication of claim reviews, and prolonged decisions on awards.

RESOLUTION PROCEEDING QUESTIONNAIRES

- Upon selection of a Resolution Proceeding, the Administrator requests that the Claimant and the AG Designee each complete a questionnaire to assist the Administrator’s evaluation and to focus on issues that impact the difference in the Claimant’s Position and the AG Designee’s Position.
- Questionnaires are brief and seek information about:
 - Primary areas of difference in the parties Positions, under the *Guidelines*
 - Additional information that may be submitted during the resolution proceeding stage
 - AG Designee’s position on eligibility
 - Availability of resident file or similar records
 - Special circumstances for a Resolution Proceeding hearing
- Should the AG Designee provide data/information identified in the *AG Designee Position Checklist* supplied by the Administrator in the AG Designee Position letter, then a *AG Designee Questionnaire* may not be necessary.
- AG Designee is encouraged to affirmatively confirm or contest in writing **Eligibility** as a threshold item for compensability from the Fund (such as Former YDC Resident or YDC facility) to protect the YDC Settlement Fund from ineligible or fraudulent claims. If AG Designee contests Eligibility, the Administrator requests that the AG Designee provide a brief written explanation and a list of documents/materials the AG Designee utilized to arrive at an Eligibility assessment.

REQUESTS BY THE ADMINISTRATOR

- The Administrator will review the available information and documents and assess whether to request additional information from the Claimant and/or the AG Designee.
- When information requested by the Administrator has not been provided, the Administrator will continue to move forward with the Resolution Proceeding stage and make decisions based on information provided in accord with the statute and the *Guidelines*.

CLAIM RECORD AND SUPPLEMENTAL INFORMATION

- An important part of the claims process is the Claimant's choice as to what information to include in a claim packet, with some allowance for supplements during claims processing, to permit verification for a claim position/total claim amount.
- The Administrator understands that those subjected to sexual abuse and/or physical abuse may not be able to provide details about all events, especially many years later.
- It is important for Claimants to make reasonable efforts to provide information to support a claim. For example, under the *Guidelines* that the Administrator is required to follow, claims may be denied or the amount reduced where reasonably expected proof is lacking.
- Upon selection of a Resolution Proceeding, the parties should be ready to promptly provide any additional information that may assist the Administrator's independent evaluation.
- The Administrator will permit a limited time frame for the Claimant to submit supplemental documentary information for the claim packet in advance of a hearing, with deadlines identified in a Scheduling Notice. Any supplemental information must also be shared with the AG Designee.
- Claimant and/or AG Designee to provide Resident File or similar records during the pre-hearing submission time period identified in a Scheduling Notice.
- No supplemental information will be considered by the Administrator unless the parties have shared it with one another, and with sufficient time to comment on what weight to afford to it when the Administrator is conducting his independent evaluation.
- For Claimants who revise or update their claim position or total award amount in a post-hearing memo, then the Claimant will also supplement the claim packet record with an affidavit or declaration outlining testimony supporting the updated or revised position.

OPTIONAL MEMOS

- Resolution proceeding memos are meant to assist the Administrator's independent evaluation of the Claim and may address key issues and a proposed standard for valuation issues (such as frequency multiplier, limitations/laches, justification, etc.) to align with fairness and uniformity under *Guidelines*.
- Pre-hearing memos in particular may assist in narrowing the focus to contested issues that impact the difference in the Claimant's and AG Designee's respective positions and help prepare the Administrator in conducting a live testimony hearing.
- Memos are optional, and counsel may choose to inform staff that no pre- or post-hearing memo is needed to assist the Administrator's evaluation.

- It is important for counsel to identify to the Administrator’s staff by deadlines in a Scheduling Notice whether or not, counsel intends to provide an optional memo, and to be sure all parties are included on that communication.

RESOLUTION PROCEEDING TYPE

- Resolution proceedings may be either a live hearing involving testimony in the form of a conversational interview under oath, or by written submission only.
- It is helpful for a Claimant to identify, at the time of selecting a resolution proceeding, the resolution proceeding type and some initial information for logistics.
 - Whether selecting a live hearing (in-person) with the Administrator, or selecting evaluation by the Administrator based on written submissions only.
 - Whether claimant is currently a resident at a department of corrections facility (state or county), and if so where and whether a change in status or change in location is anticipated.
- Live testimony directly from a Claimant can be very helpful for the Administrator’s evaluation of a claim.
- Ultimately, it is each Claimant’s decision whether to provide testimony at a Resolution Proceeding hearing to support their claim.
- If a Claimant is not comfortable providing live testimony and declines to do so, such a decision will **not** be held against the Claimant. The Claimant should consider if lack of live testimony could limit the Administrator’s understanding of events identified in a claim packet or written statement.
- A Resolution Proceeding hearing may be held at a location suited for the circumstances of the claim.
- Generally, no later than 3 weeks in advance of a scheduled live hearing, a Claimant may request remote participation for a live hearing, with reasons provided. In-person testimony is preferred by the Administrator for evaluation of a claim and a request for a remote live hearing need to be supported by good cause.
- Resolution Proceeding hearings are generally expected to last about one hour or so, with flexibility for taking breaks particularly when the Claimant is providing testimony. Time needed will depend on the type of information anticipated to be presented, but hearings will not extend beyond three hours.

LIVE HEARING RESOLUTION PROCEEDING

- Live hearings are conducted in a trauma-informed manner to the greatest extent possible.
- Hearings are for the benefit of Claimants to assist the Administrator’s independent evaluation of each claimant’s position/total claim amount as identified in the claim.
- Live hearings will be in a confidential setting. The Administrator’s questions are meant to assist understanding of events and context as recalled by the Claimant and identified in the claim.

- The Administrator may directly ask such questions to the Claimant, or with the assistance of a trauma-informed professional who is experienced in dealing sensitively and compassionately with victims and survivors of sexual abuse and physical abuse.
- In general, a limited number of individuals are permitted to be present in the room when the claimant is in the hearing interview. Other attendees, including counsel for the claimant and the AG Designee, generally may attend by either live feed in separate room, or by remote access that is secure and confidential. Hearing proceedings will NOT include any video or audio recording.
- Claimant’s counsel and AG Designee will confirm the individual persons who are anticipated participants/attendees – to include identifying those requesting to attend remotely.
- Live testimony is under oath.
- Claimant and the AG Designee may suggest questions or topics for a live hearing to assist preparation of the Administrator. There will be an opportunity to do so in advance of a hearing and during a pause near the conclusion of the live hearing testimony.

LIVE TESTIMONY OF CLAIMANT

- RP host will make reasonable effort to ensure the setting is comfortable and informal, and without tables or physical barriers between those physically present in the room during live testimony.
- Claims administration staff may arrive up to an hour before the resolution proceeding hearing to assess setting and may also reach out to counsel to arrange an earlier time and date to come on-site to assess setting and logistics.
 - RP host to provide 3 on-site rooms (1 for interview, 1 for live feed room, 1 for breakout room for Administrator and his staff).
 - RP host to provide remote-attendance logistics and confirm in advance use of secure and confidential technology and no audio/visual recording.
 - RP host to confirm adherence to *Safety, Security and Impairment* instructions for live hearing.
- During the live testimony hearing:
 - Administrator Broderick will facilitate introductions, and then he will provide some brief opening remarks about the hearing.
 - Administrator’s staff will administer testimonial oath with the claimant.
 - Administrator will explain the role of the attending trauma-informed (TI) professional.
 - Trauma Informed (TI) professional and/or the Administrator will ask questions, and the Claimant should describe his/her experiences in a conversational way, directly with the Administrator and/or the TI professional.
 - Testimony will pause to allow the Administrator to meet with claimant’s counsel and the AG Designee to suggest additional lines of discussion with the Claimant
 - Administrator will ask both sides whether further description may be helpful for his independent evaluation of the claim and the parties’ positions.
 - Suggested additional lines of questions may relate to clarifying testimony or covering aspects not yet described.

- All interaction with the Claimant will be conducted in a non-adversarial manner.
- The Administrator and the TI professional will provide closing remarks to the claimant.

SPECIAL CIRCUMSTANCES

- The Claimant, Claimant’s counsel, or the AG Designee should inform the Administrator in advance of a hearing of any special circumstances believed to be important for preparation.
- Special circumstances that may impact a live hearing include information such as:
 - If remote attendance is approved by the Administrator: where will Claimant be located, and who will be present with the Claimant
 - Attendance of an additional victim advocate and/or support person
 - Interpreter attending with the Claimant
 - Claimant’s medical or mental health status, if applicable.
 - Residential status
- When considering special circumstances, counsel should also review the *Administrator’s Notice on Safety, Security & Impairment at Resolution Proceedings*.

ATTORNEY’S FEES/COSTS AFFIDAVIT

- Claimant’s counsel is required to provide an updated attorney’s fees affidavit detailing the time and work spent on the Claim, for post-hearing submissions.

NOTICE OF RECORD CLOSURE

- Following conclusion of the resolution proceeding hearing, the claim record will be left open for a definite period of time for the post-hearing submissions.
- Notice of Record Closure will allow the parties limited time to object before record is closed, with Record Closure triggering the 30-day period for the Administrator’s final decision.

ADMINISTRATOR’S DECISION

- When conducting his independent evaluation of the Claim, the Administrator will consider the totality of the claims record and advocacy of the parties.
- The Claimant is not required to accept the Administrator’s decision and will have 30 days to accept the decision or elect to withdraw from the claims process.
- The Administrator’s decision is final and non-appealable, except that the Claimant or AG Designee may ask for reconsideration under the Claims Process on grounds that it contains mathematical errors.
- If the Claimant accepts the Administrator’s decision, then the claim will be resolved and the Claimant will need to sign Waiver and Release forms for rights against the State of New Hampshire (but not for rights against individual perpetrators of abuse even if state employees).

OPPORTUNITY FOR PRIVATE MEETING

- The Claimant may request a private meeting with the Administrator after final resolution of the claim. No representatives of the State of New Hampshire or the Attorney General’s Office will be allowed to attend.

OPPORTUNITY FOR MUTUAL AGREEMENT

- A Claimant and the AG Designee are free to mutually agree to resolve the claim on their own, including while a Resolution Proceeding is pending, any time before the Administrator’s written decision is issued.
- The parties shall **NOT** apprise the Administrator of any settlement negotiations or discussions they have had, or are having, with each other (such as potential dollar amounts that are separate and apart from their stated claim positions).
- In the event the parties resolve the claim by mutual agreement, both should inform the Administrator in writing as soon as practicable in order to preserve claims administration resources.
- The Administrator encourages claims counsel to communicate directly with the AG Designee to clarify and resolve open questions and provide additional information in order to resolve the claim in accord with the statute’s purpose.