

## YDC Claims Administration and Settlement Fund

### ADMINISTRATOR'S LETTER

February 2024

The YDC Claims and Settlement Fund began its second full year of operation on January 1, 2024. While there has been a steep learning curve for everyone utilizing the Fund and for my staff in creating and running its day-to-day operations these last fourteen months, I am very pleased with our progress and with the cooperation we have enjoyed from claims counsel, the Attorney General's Office, the legislature, the organized bar, the Commissioner of Corrections and staff, and the Supervisors and staff of the County Houses of Correction. I am also grateful to the mental health community who have offered their assistance. As a result of these collective efforts, I am optimistic about the year ahead.

As we begin our second full year (with a likelihood of an amended claims statute this spring), we have a solid track record of processing claims, conducting resolution proceedings, and engaging in ongoing, productive discussions with claims counsel, the Attorney General's Office and interested stakeholders on process improvement. Armed with the everyday experience of this past year and in anticipation of an increase in claim filings this year, I wanted to share some thoughts and practical suggestions on how we might all improve the processing and resolution of claims to meet everyone's needs and expectations.

- (1) **Submission Checklist.** Please carefully review the Submission Checklist at the front of the Claim Packet to be certain you have provided ALL the requested information. That will speed processing and save time during administrative review in order to issue a "complete" date. Things will move forward more quickly on your claim if you take the time on the front end to provide what we need.
- (2) **Additional Information to the Attorney General's Office.** Please consider providing the Attorney General's Office (AGO) the records and information they request as they begin to review your claim. They currently have a 30-day window to take an initial position on your claim after I deem it administratively complete. In many cases what they request from you I would very likely find useful in evaluating your claim if the matter goes to a resolution proceeding. As you know, you can settle your claim directly with the AGO at any time before I issue a decision. Providing the AGO with what it requests might well speed a settlement of your claim without my involvement. If not, I will have the benefit of that material at the resolution proceeding, and it might help inform and/or support your claim and my decision.
- (3) **Supplemental Materials.** Please provide any supplemental materials in support of your claim as early as you can but generally speaking, no later than 30 days after your scheduling notice for a resolution proceeding hearing. I understand that there could be claims where materials will need to be filed after the deadline, but they should be few in number. I would encourage you to gather supportive and informative materials and records before you file your claim, whenever possible. That will aid the AGO in its claim review and assist me in preparing for a resolution proceeding. For example, if there are available medical records, doctors' reports, therapy notes, statements, etc. that you believe support your claim and its causal link to alleged abuse at a YDC facility, that would be helpful for you to provide. At a minimum, you should inform me of the efforts taken to obtain supporting documentation.
- (4) **Questionnaires.** I encourage the parties to provide a complete questionnaire when a resolution proceeding is chosen so that the basic claim and any dispute with the initial position letter of the AGO is clear. For that to happen, I request that the AGO continue its recent practice in its initial position letter of being specific about its reasoning, the

categories of claimed abuse it accepts in making an offer, and any issues related to eligibility.

- (5) **Mutual Agreement of Parties.** I encourage the parties to initiate or continue settlement discussions pre- and post-resolution hearings before my decision is final. While I am not privy to those discussions, they may well yield very positive results.
- (6) **In-Person Hearings.** Although in-person participation by a claimant is not mandated for a resolution hearing, I cannot emphasize too strongly how valuable it is for me and my trauma-informed expert to be sitting in the same room with the claimant for our conversation with him/her about what happened to them. Deciding claims by written submissions only may sometimes be necessary but it is far from optimal and certainly not recommended if it could be avoided. In exceptional circumstances or because of hardship, a remote hearing may be required but again I encourage counsel and claimants to opt for an in-person session in virtually all cases. It is to everyone's advantage.
- (7) **Resolution Proceeding Memos.** Having held many resolution proceedings by now, post-hearing memos that merely recap the claim and key testimony I have so recently heard are generally not that helpful. What would be more valuable would be brief pre-hearing memos alerting me to key issues I should anticipate in preparing for the resolution proceeding, including those involving statutory or *Guidelines* interpretation. For example, if eligibility is a contested issue, it would be important to have the parties' considered views in advance along with any court or related records that would assist me in resolving the dispute. It would also be helpful to alert me in pre-hearing memos to any aggravators, mitigators and/or special circumstances I should be attentive to in hearing the claim.
- (8) **Counsel Inquiries.** While my small staff is available to address questions by phone or e-mail, I would encourage everyone to be selective about their inquiries. Time spent answering questions throughout the day takes staff away from their work and slows our processing. Admittedly, this is a new system that has taken all of us some time to learn but as we begin year two, I would expect fewer questions. We have adopted a practice of conducting scheduled call-in sessions for counsel's questions with our staff. That practice has been working well and I encourage that inquiries and suggestions be limited to those sessions whenever possible.

Obviously, *pro se* claimants are free to reach out to us at any time as needed. My staff will be periodically updating our website to provide guidance, resources, and informational materials. This should help address inquiries, too.

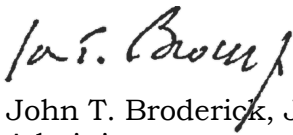
- (9) **Support Resources.** I encourage counsel to work with their clients pre- and post-hearing, and throughout the claims process, to make certain they are getting the counseling they may need to proceed through our trauma-informed, victim-centered administrative claims process. We have listed possible resources on our website. I would also suggest that you explore with your client whether having a family member or close friend present with them at a resolution proceeding hearing could have the unintended consequence on your client of being too uncomfortable or embarrassed in front of that person to be totally forthcoming with us.
- (10) **Payment of Awards.** Because I may soon be able to issue awards to claimants payable either in a lump sum or periodically over several years (under the anticipated legislative amendments), I would appreciate counsel letting me know in advance of a resolution hearing if their client has special financial, family, health or life circumstances that I

should consider in structuring payment of the award. Counsel fees will not be subject to periodic payment.

- (11) **Automated Claims Management System.** If things proceed as we hope, we expect to have a fillable claim form available online this spring. That will speed and ease the process. We will continue to accept paper claim packets, as necessary. Staff will provide guidance in order to smoothly transition parties to filing new claims and processing existing claims using the new automated CMS.
- (12) **Department of Corrections residents.** We have received numerous claims from residents at the state prison and the county houses of correction. There may be additional claims from residents that will be filed going forward. We have had success in scheduling resolution hearings on site in these claims and are working closely with corrections leadership and staff to ensure they are effective.

In closing, I want to reiterate that our goal remains to provide an efficient, confidential, timely, and trauma-informed process to resolve abuse claims consistent with legislative intent. This next year I expect will be especially busy for us and we appreciate your cooperation in ensuring success. There is much to do.

Sincerely,



John T. Broderick, Jr.  
Administrator

New Hampshire Youth Development Center  
Claims Administration and Settlement Fund