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INFORMATION SHEET ON YDC SETTLEMENT FUND HISTORY AND OPERATION

GENERAL BACKGROUND

The legislature created the YDC Claims Administration and Settlement Fund (Settlement Fund) in 2022 with the goal of attracting and resolving over 1,000 claims then filed in the Superior Court, as well as any future claims that might be filed with it before the statutory deadline of December 31, 2024 (under the original statute). The idea was grounded on the belief that a more expeditious, trauma-informed and victim-centered process would be less costly, more compassionate, and more predictable than jury trials in public courtrooms. The administrative settlement process became operational on January 1, 2023.

The legislature established a dedicated, non-lapsing fund of \$100 million, with money set aside to pay settlements and awards to those who established sexual and/or physical abuse while detained in identified YDC facilities.

The statute and its valuation Guidelines are very specific on the types of abuse that could be claimed as eligible for payment from the Fund and how much may be awarded for each type of abuse. The Guidelines identify aggravating factors (such as more than one perpetrator performing abuse) and mitigating factors (such as problems of proof) to take into account when calculating valuation amount. According to the statute as amended in 2024, the Settlement Fund is anticipated to receive appropriations of up to \$75 million per fiscal year through fiscal year 2032. If awards and settlements in any fiscal year were expected to exceed \$75 million, the Claims administrator, in consultation with the attorney general, could request additional funding. In June 2024, the legislature added another \$60M in appropriations to the Fund.

WHAT ARE THE ROLES OF THE ATTORNEY GENERAL AND THE CLAIMS ADMINISTRATOR UNDER THE YDC SETTLEMENT STATUTE?

The YDC Claims Administration and Settlement Fund has two administrators with distinct responsibilities, who collaborate in certain areas as the statute anticipates.

One is the attorney general, who shall be administer the Fund and use the funds for the purpose of administering claims of former YDC residents as defined by statute (Fund administrator). 21-M:11-a, II.

The other is an independent, neutral lawyer appointed by the NH Supreme Court to serve as claims administrator, whose primary charge in the settlement process is to process claims and may settle claims at such amounts as may be agreed upon between the attorney general designee and each claimant, or at amounts which are determined by the administrator through a resolution proceeding (Claims administrator). 21-M:11-a, III. In

2022, Administrator Broderick was selected by the N.H. Supreme Court to serve as Claims administrator, after considering recommendations from both counsel for claimants and the attorney general. In 2024, retired Superior Court Judge Diane Nicolosi joined the claims administration team as assistant claims administrator to assist with volume of claims coming into the Fund. 21-M:11-a, II.

The Fund administrator and the Claims administrator consult one another in their statutory functions, such as when preparing and issuing quarterly reports. 21-M:11-a, XVI.

The attorney general also has a designee who participates in the settlement process on behalf of the state to resolve claims. 21-M:11-a, I (and throughout).

The original Settlement statute was amended in June 2024 in significant ways. Some changes related to categories of eligible abuse and award caps. 21-M:11-a, I (and throughout), V. Other changes expanded the Claims administrator's discretion for award payouts to claimants for eligible, verified claims, as well as added responsibilities to monitor Fund balances. 21-M:11-a, XII.

HOW ARE SETTLEMENTS AND AWARDS FROM THE CLAIMS FUND TO BE PAID?

Under the Settlement statute, as originally enacted, any settlements with claimants made directly with the Attorney General's Office (AGO) or any awards issued as a result of resolution proceedings conducted by the Claims administrator, were ONLY paid in a lump sum at the option of claimants. Settlements awards must give due consideration to the Guidelines developed by stakeholders and adopted by the joint fiscal committee. 21-M:11-a, III, IV.

Legal fees were and are paid as a portion of the award itself and not as an addition to it under the original and current statute.

Legal fees can be up to one-third of an award and, under the original statute, were also paid by lump sum. This was the case for the first 18 months after the statute became effective for all the attorney general's direct settlements with claimants under the Fund and for all awards issued by the Claims administrator. By June 30, 2024, after 18 months, the initial \$100 million appropriation was exhausted and nearly 190 claims were successfully resolved.

After the statute was amended in 2024, some law firms took the lead to volunteer to accept fees over a period of years or capped at 25%. Currently, about a dozen law firms have volunteered to do so. This means that currently about 95% of our claims involve lawyers and law firms who are now accepting their legal fees over a period up to three years, or at a 25% fee cap up to two years. That will be of assistance in maintaining Fund balances in the remainder of FY25 and into the next biennium if the Legislature provides further appropriations to the Fund.

HOW ARE LEGAL FEES DETERMINED?

From January 1, 2023 (when the claims fund became operational) to June 14, 2024 (when the statute was amended), all awards to claimants and their counsel were made in lump sum payments pursuant to claimant's choice under the statute. Under the original and amended Settlement statute, the Claims administrator was given discretion to award up to one-third in legal fees and must follow the standard of "reasonableness" under the statute. In exercising his discretion, the Claims administrator is guided by a common standard under NH Rule of Professional Conduct, Rule 1.5, such as the time and labor involved. Counsel for a claimant is required to provide an affidavit identifying time spent for the claimant and must update that information near the time of the resolution proceeding hearing.

The attorney general has the same discretion on agreeing to amount of legal fees for counsel on any direct settlement under the Fund, and we have seen that a one-third portion of the award for legal counsel is standard in that settlement pathway.

With the administrative settlement process underway for more than two years, the Claims administrator's determination of legal fees (as a portion of the claim award) now ranges from about 20% to 33.33%.

WHAT ARE THE "DRAWS" ALLOWED AGAINST THE SETTLEMENT FUND?

There are four "draws" against the Settlement Fund: (1) settlements made with claimants directly by the AGO (approximately \$65,652,375 as of December 31, 2024); (2) awards issued to claimants by the Claims administrator after resolution proceedings (approximately \$59,785,750, as of December 31, 2024); (3) expenses of the AGO associated with its claim fund work outside of ordinary operational expenses of the department of justice (approximately \$3,731,180 as of December 31, 2024); and (4) operating expenses for YDC Claims Administration (approximately \$2,678,284 as of December 31, 2024).

As of December 31, 2024, 242 claims have been resolved with settlement from the Fund, totaling over \$125 million (without interest).

The next quarterly report is anticipated to be issued during the third week of April and will provide updated information on claims activity, resolution activity, costs, and fiscal year impact.

HOW ARE CLAIMS EVALUATED AND VERIFIED?

Individual claimants are required to submit information and documents to support their claim. For example, the claims process as revised in 2024 requires claimants to provide their resident file, which assists in evaluating eligibility. If a claimant does not provide a resident file or other documentation, then he or she must provide an explanation of efforts to obtain documentation for eligibility.

Claim submissions are reviewed for administrative completeness and shared with the AGO, who evaluates the packet. The AGO assists in reviewing whether a claimant is eligible and informs the Claims administrator of its view of the claim to assist with evaluation.

If a claim does not resolve through a direct negotiation with the AGO, then the claimant proceeds to a resolution proceeding hearing with the Claims administrator or assistant Claims administrator and a trauma informed expert for verification and evaluation.

Sexual Abuse has 5 categories, with definitions in the statute and Guidelines, and covers a range of abuse, such as: anal or genital rape, oral rape, intimate sexual touching, groping, conduct causing fear of sexual abuse, conduct constituting indecent exposure, lewdness, violation of privacy.

Other Abuse has 6 categories with definitions in the statute and valuation Guidelines, and covers a range of abuse, such as: physical abuse causing permanent, life threatening, or serious bodily injury, physical abuse causing bodily injury, conduct constituting intentional infliction of emotional distress, reckless conduct, unlawful restraints, and unlawful isolated confinement.

There is a list of aggravating factors identified in the Guidelines and claim worksheet approved by Joint Fiscal, with 11 different factors for sexual abuse categories and 5 factors for other abuse categories.

Examples of aggravating factors include: abuse resulting in a suicide attempt by the claimant while at the YDC facility, retaliation or punishment for refusing to submit to sexual advances, abuse with unjustified out of community confinement for 7 days or more, simultaneous physical participation by more than one actor during the abuse incident, additional actor as an observer or lookout, duration of abuse for more than 12 months, different abuser for different abuse incidents, photographs or video recording of the abuse, sexual abuse resulting in pregnancy or a sexually transmitted disease.

All of these kinds of abuse, severe and prolonged for many claimants, is what the Claims administrator has found credible after overseeing the claims process for more than two years so far. The Claims administrator regularly sees and hears from people who suffered abuse in hundreds of claims reviewed and claimants interviewed under oath in hearings since 2023. By statute, the privacy of each claimant's identity and experience is kept confidential.

A trauma-informed expert is part of the hearing team for every resolution proceeding interview. Representatives for the AGO and the claimant are able to provide questions and topics for the interview, and also witness the live interview to see what claimants say and how they respond.

HOW ARE SETTLEMENTS AND AWARDS FROM THE CLAIMS FUND CALCULATED?

All settlements and awards from the Settlement Fund are calculated using values for various categories of abuse set forth in the Settlement statute and Guidelines and by using the claim worksheet approved by the Joint Fiscal committee. For example, anal or genital rape as sexual abuse is assigned a base award of \$200,000.00, and unlawful strip search as other abuse is assigned a base award of \$1,000.00. Calculations for frequency of abuse episodes are accounted for in order to arrive at an adjusted base award.

The Settlement statute permits higher awards if certain identified *aggravators* are found in a particular claim and lower awards if certain identified *mitigators* are present. For example, one aggravating factor is “did different people sexually abuse you at different times” and is valued at 50% base award amount. One mitigating factor is “problems of proof” where a claim may be denied or the award amount discounted where reasonably expected proof or documentation is lacking.

So far, the Claims administrator has resolved two claims of egregious sexual abuse under the statute as amended in 2024.

WHY WAS THE CLAIMS STATUTE AMENDED EFFECTIVE JUNE 14, 2024?

By the spring of 2024, it became apparent that many of the YDC cases in Superior Court were not migrating to the administrative claims process as quickly or in the numbers that had been expected. At the time, the deadline for filing all claims in the administrative process was months away (December 31, 2024). To address this situation, and after extended discussions among the attorney general, and the lawyers representing almost all the Superior Court claimants, an “agreement” was reached. Specifically, (1) the Settlement statute would be amended to include some additional categories of compensable abuse; (2) the existing cap of \$1.5 million for sexual abuse would remain in place unless *egregious sexual abuse* was established, in which a claimant could be awarded up to \$2.5 million; (3) the cap for physical abuse—renamed *other abuse* (with expanded definition)—was increased from \$150,000 to \$250,000; and (4) settlements and awards could FOR THE FIRST TIME be paid out over a period of “up to 10 years” at the discretion of the Claims administrator (with 5% compound interest for future payouts). In return, counsel for virtually all of the YDC cases in the Superior Court promised, in writing, at the request of the state (and part of the legislative record for SB591) that they would recommend to the vast majority of their clients that they transfer their claims from the Superior Court to the administrative claims process.

To be certain enough time was available for counsel to complete the transfer of hundreds of cases from the Superior Court to the administrative process, the deadline for filing claims with the Settlement Fund was extended by the legislature for six months—from December 31, 2024 to June 30, 2025.

The amended statute allows individuals to file a notice of claim by the filing deadline of June 30, 2025, followed by a full claim packet within 60 days following.

IN BASIC TERMS HOW DOES THE CLAIMS FUND PROCESS WORK?

The vast majority of claimants are represented by counsel although there is a small percentage of self-represented claimants. Most claimants reside in New Hampshire. To date, the youngest claimant to appear at a resolution hearing was 19; the oldest was 78. All hearings are held in person in New Hampshire. Remote live hearings by video are only allowed in exceptional circumstances with approval from the Claims administrator.

All claim materials are filed with our claims administration. The claims are shared with the AG designee in a confidential manner for the purpose of YDC settlement claims processing, once assessed as administratively

complete. Staff review claim submissions for duplicate filings to make sure that an individual has one live claim in the settlement process for evaluation and a potential award offer.

Once a claim is administratively complete with all required documents and forms, a scheduling notice is issued for a resolution proceeding hearing before the Claims administrator or assistant administrator. The hearings are held under oath in an informal setting and are observed by counsel for the state and the claimant. Counsel can propose questions to ask a claimant through the interviewer, and both sides provide evaluation statements to the Claims administrator or assistant administrator when the interview is concluded. The hearings generally last for 90 minutes but sometimes, depending upon complexity and emotional condition of a claimant, last up to 3 hours.

Counsel for the state and/or the claimant may file brief post-hearing memos and then the claim file is closed. Decisions are generally issued within 45 to 60 days from the date of a hearing.

A claimant is free to accept or reject the Claims administrator's decision. At present, almost 100% of our decisions are accepted by claimants and the claim is then closed, and then proceeds to payment processing with the Attorney General's office.

Since the Settlement statute's amendment in June 2024, approximately 80% of the Claims administrator's awards are payable to claimants over time—some over a period as long as ten years.

Some claimants directly negotiate a resolution with the AGO to resolve a claim under the Fund. Sometimes, they agree to all essential terms and provide a stipulated agreement to the Claims administrator for review before the settlement can proceed to payment processing. This settlement activity with the AGO has significantly slowed during FY25 so far. Keeping appropriations at a limited balance in the Fund may impact the parties' opportunity to settle directly in this way under the Fund.

Since the fall of 2024, the Claims administrator has developed, with the AGO, a third avenue to assist in resolution of claims under the Fund. The parties sometimes reach an agreement on an award amount and then ask the Claims administrator to review and decide open items, such as the portion of legal fees or the number of years for installment payouts. He does so and issues a final decision for the claimant to either accept or reject. A claimant who opts for this third avenue may NOT then seek a resolution proceeding hearing for a second evaluation.

WHAT PRECAUTIONS ARE TAKEN TO DETECT FRAUDULENT CLAIMS?

Claims administration staff carefully review each claim upon receipt as does authorized personnel of the Attorney General's Office. Full verification of a claimant's identity is required by statute and all claim forms are signed under oath and notarized. We confirm a claimant's eligibility to file a claim typically through the AGO's assessment, and most claimants have a resident file that establishes dates of detention and daily logs.

Claims administration staff are attentive to duplicate claims and potentially fraudulent claims and perform fraud analysis on a regular basis. If claims are viewed as potentially fraudulent, claims administration may refer the

claim or information provided to the Attorney General's Office. As far as is known to the Claims administrator and his team, no claim that has received an award determined to be fraudulent. We are mindful to be watchful as is the AGO.

All resolution proceeding hearings are under oath so the Claims administrator or assistant administrator get to meet and interview the claimants, and the AGO has a representative at every hearing who sees and hears what the hearing team does and how the claimant responds. There is opportunity for the AGO to weigh in on credibility and eligibility throughout the resolution proceeding stage.

In the vast majority of claims, claimants have retained reputable counsel who have both legal and ethical obligations not to submit or assist in submitting untrue claims. This also serves as a valuable screen for potentially fraudulent claims. Also, with the AGO reviewing all completed claims, if they see something they believe to be suspicious, the AGO representatives can bring it to the Claims administrator's attention.

WHAT IS THE TRANSPARENCY OF THE YDC CLAIMS PROCESS?

The administrative process under the Settlement statute is confidential. Claimants' identities are confidential, as well as their claim forms and materials. Only a claimant is free to speak publicly about their abuse claim.

On a quarterly basis, after consultation with the AGO and in accordance with the Settlement statute, the Claims administrator develops a report in consultation with the AGO, and provides the Governor, the Speaker of the House, the Senate President, and the Joint Fiscal Committee a detailed report. Each quarterly report outlines settlement amounts, award amounts, the types of abuse involved in both, Fund balance information, expenses of the Claims administrator's operation, and expenses of the AGO related to the claim process outside of ordinary its operational expenses. We also publicly post the quarterly reports and other claims processing information on our web page to maintain transparency.

We have now issued quarterly reports eight times and in April 2025, we will issue our ninth. We have appeared before Joint Fiscal Committee several times to discuss our operation and our reports, and have been responsive to adjust our quarterly report when asked to do so.

We receive calls and emails from the media and are prompt to respond by phone and in writing.

We believe we have been as transparent as possible where the statute allows, and in our transmittal letters to the quarterly report. We always offer and invite the opportunity to meet or talk by phone with government leadership to address any questions or issues they may have. We will continue to do so.

ADVANTAGES OF THE ADMINISTRATIVE CLAIMS PROCESS vs. THE SUPERIOR COURT

The administrative process created by the legislature avoids ongoing years of public jury trials, extraordinary discovery and trial expenses, and numerous appeals. Jury verdicts are hard to predict and any verdict will come with years of pre-judgment interest. Jury trials will likely put those who may have been abused through further trauma. A jury award is payable in short order unless appealed.

Under the Settlement statute designed by the Legislature, the resolution process for YDC claims of abuse is trauma-informed and victim-centered, and there is confidentiality. It takes much less time than waiting in line for a jury trial. The process can only consider specific types of abuse as identified by the Legislature and the Claims administrator is bound by the settlement figures selected by the legislature for each category of abuse, as well as aggravating factors and overall caps.

The settlement process under the Fund is a far more predictable measure of state liability, though a considerable sum is still at stake.

Importantly, the process by statute is confidential, sensitive to trauma survivors, provides opportunity for both the state and the claimant to present information for evaluation, and also gives the parties the choice to directly settle on their own within parameters set out by the Fund statute.

WHAT HAPPENS TO CLAIMS ADMINISTRATION OPERATIONS IF MINIMAL AND/OR UNPREDICTABLE APPROPRIATIONS ARE FORTHCOMING

The YDC Claims Administration relies on several consultants with annual contracting. Current contracts conclude on June 30, 2025, unless renewed. It is up to the consultants whether they will view the state as providing stable funding in order to continue contracting to provide professional services for the statutory resolution process. Without our excellent consultants, our operations will end.

The YDC Claims Administration also relies on highly valued staff. It is also up to staff whether they see the state as providing stable funding in order to continue to commit to employment with this short-term project. Any diminishment of staff significantly compromises our continued operations.

Without sufficient assurances of state appropriations:

- YDCCA cannot responsibly approach consultants for next contracting cycle, and current contracts end on June 30, 2025.
- YDCCA cannot responsibly ask the Judicial Branch to renew the current lease for the YDCCA location, which has a current end date of May 31, 2025
- YDCCA cannot responsibly continue recruitment efforts for the open position for a claims processing specialist (despite several pending applicants)
- YDCCA staff will need at some point in the near term to disband in pursuit of other employment to support their families.

Additionally, counsel who made written assurances to the state to transfer cases pending in Superior Court to the administrative settlement process before the filing deadline (6/30/2025) may see lack of funding, or minimal funding, as a breach, and then cease filing claims and withdraw ones that are pending.

Lack of sufficient and predictable funding -- to allow processing to continue and finish processing for the final universe of claims -- is the equivalent of a forced wind-down of the entire operations built by the Claims administrator in cooperation with stakeholders.

The decision on committing to sufficient, predictable funding is critical.