



COMMONWEALTH of VIRGINIA
Department of Medical Assistance Services

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MEMORANDUM

TO: The Honorable Thomas K. Norment, Jr.
Co-Chairman, Senate Finance Committee

The Honorable Emmett W. Hanger, Jr.
Co-Chairman, Senate Finance Committee

The Honorable S. Chris Jones
Chairman, House Appropriations Committee

Daniel Timberlake
Director, Department of Planning and Budget

FROM: Jennifer S. Lee, M.D. *JL*
Director, Virginia Department of Medical Assistance Services

SUBJECT: Civil Monetary Penalties Funds – FY2018 due October 1, 2018

This report is submitted in compliance with Item 307 Q.1 of the 2018 Appropriation Act which states: *“Out of this appropriation, \$1,000,000 the first year and \$1,675,000 the second year from special funds is appropriated to the Department of Medical Assistance Services (DMAS) for the disbursement of civil money penalties (CMP) levied against and collected from Medicaid nursing facilities for violations of rules identified during survey and certification as required by federal law and regulation. Based on the nature and seriousness of the deficiency, the Agency or the Centers for Medicare and Medicaid Services may impose a civil money penalty, consistent with the severity of the violations, for the number of days a facility is not in substantial compliance with the facility's Medicaid participation agreement. Civil money penalties collected by the Commonwealth must be applied to the protection of the health or property of residents of nursing facilities found to be deficient. Penalties collected are to be used for (1) the payment of costs incurred by the Commonwealth for relocating residents to other facilities; (2) payment of costs incurred by the Commonwealth related to operation of the facility pending correction of the deficiency or closure of the facility; and (3) reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or individuals used by the facility to provide services to residents. These funds are to be administered in accordance with the revised federal regulations and law, 42 CFR 488.400 and the Social Security Act § 1919(h), for Enforcement of Compliance for Long-Term Care Facilities with Deficiencies. Any special fund revenue received for this purpose, but unexpended at the end of the fiscal year, shall remain in the fund for use in accordance with this provision.*

[...] 4. By October 1 of each year, the department shall provide an annual report of the previous fiscal year that includes the amount of revenue collected and spending activities to the Chairmen of the House Appropriations and Senate Finance Committees and the Director, Department of Planning and Budget.

Should you have any questions or need additional information, please feel free to contact me at (804) 786-8099.

JSL/

Enclosure

pc: The Honorable Daniel Carey, M.D., Secretary of Health and Human Resources

Civil Monetary Penalties (CMP) Funds- FY 2018

A Report to the Virginia General Assembly

October 1, 2018

Report Mandate:

The 2018 Appropriations Act Item 307 Q.1 states “Out of this appropriation, \$1,000,000 the first year and \$1,675,000 the second year from special funds is appropriated to the Department of Medical Assistance Services (DMAS) for the disbursement of civil money penalties (CMP) levied against and collected from Medicaid nursing facilities for violations of rules identified during survey and certification as required by federal law and regulation. Based on the nature and seriousness of the deficiency, the Agency or the Centers for Medicare and Medicaid Services may impose a civil money penalty, consistent with the severity of the violations, for the number of days a facility is not in substantial compliance with the facility’s Medicaid participation agreement. Civil money penalties collected by the Commonwealth must be applied to the protection of the health or property of residents of nursing facilities found to be deficient. Penalties collected are to be used for (1) the payment of costs incurred by the Commonwealth for relocating residents to other facilities; (2) payment of costs incurred by the Commonwealth related to operation of the facility pending correction of the deficiency or closure of the facility; and (3) reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or individuals used by the facility to provide services to residents. These funds are to be administered in accordance with the revised federal regulations and law, 42 CFR 488.400 and the Social Security Act § 1919(h), for Enforcement of Compliance for Long-Term Care Facilities with Deficiencies. Any special fund revenue received for this purpose, but unexpended at the end of the fiscal year, shall remain in the fund for use in accordance with this provision.

[...] 4. By October 1 of each year, the department shall provide an annual report of the previous fiscal year that includes the amount of revenue collected and spending activities to the Chairmen of the House Appropriations and Senate Finance Committees and the Director, Department of Planning and Budget.

Background

Civil Money Penalty (CMP) is a monetary penalty the Centers for Medicare & Medicaid Services (CMS) may impose on skilled nursing facilities (SNFs), nursing facilities (NFs), and dually-certified SNF/NF. This may be imposed either for the number of days or for each instance in which a facility is not in substantial compliance with one or more Medicare and Medicaid participation requirements for Long Term Care Facilities (Code of Federal Regulations (CFR)

About DMAS and Medicaid

DMAS’ mission is to ensure Virginia’s Medicaid enrollees receive high-quality and cost-effective health care.

Medicaid plays a critical role in the lives of more than a million Virginians. Medicaid enrollees include children, pregnant women, parents and care takers, older adults and individuals with disabilities. Virginians must meet income thresholds and other eligibility criteria before qualifying to receive Medicaid benefits.

Medicaid covers primary and specialty health care, inpatient care, and behavioral health and addiction and recovery treatment services. Medicaid also covers long-term services and supports, making it possible for thousands of Virginians to remain in their homes or to access residential and nursing home care.

Quick Medicaid facts:

- Covers 1 in 8 Virginians
- Covers 1 in 3 births and 33% of children
- Supports 2 in 3 nursing facility residents

Virginia Medicaid and Children’s Health Insurance Program (CHIP) are administered by the Department of Medical Assistance Services (DMAS) and are jointly funded by Virginia and the federal government under the Title XIX and Title XXI of the Social Security Act. Virginia generally receives \$1 of federal matching funds for every \$1 Virginia spends on Medicaid.

42 Part 488.430). The requirements for participation with Medicare and Medicaid for Long Term Care (LTC) facilities may be found at 42 CFR Part 483 subpart B.

Sections 1819(h)(2)(B)(ii)(IV)(ff) and 1919(h)(3)(C)(ii)(IV)(ff) of the Social Security Act (the Act) incorporate specific provisions of the Patient Protection and Affordable Care Act, (the Affordable Care Act) (Pub. L. 111-148) pertaining to the collection and uses of CMPs. CMS requires an annual plan for reinvestment of such funding for each state typically through the funding of projects which directly improve the quality of life for individuals in nursing facilities

Funding Parameters

CMS requires that the CMP project period not exceed three (3) years. Federal guidelines for CMP funds prohibit extensions, including no-cost extensions. Such funding is not guaranteed in every instance. The Department of Medical Assistance Services (DMAS) shall have discretion to release CMP funds. In some cases, funds may be used to cover the cost of transferring residents from their current nursing facility to an approved alternate temporary site when a nursing facility experiences an emergency or evacuation.

Allowable use of funds

- Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities.
- Facility improvement initiatives (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs).

Prohibited use of funds

- Funding for capital improvements to a facility
- Payment for any item or service which is already the responsibility of the nursing facility
- Projects or activities intended to achieve compliance with federal or state guidelines
- Funding projects, items or services that are not related to improving the quality of life and care of nursing facility residents
- Projects for which a conflict of interest or the appearance of a conflict of interest exists
- Long term projects (greater than 3 years)
- Temporary manager salaries or Ombudsman Salaries
- Supplementary funding of federally required services

Funding allocated by the 2018 General Assembly and available for the Commonwealth 3 year period is as follows:

Year 1	Year 2	Year 3	Total
\$522,139.13	\$444,163.13	321,400	\$1,287,702.26

Spending Activities

DMAS has worked to build out a comprehensive application process for soliciting, reviewing and submitting applications to CMS. During this first year, DMAS received eight applications, which DMAS forwarded in June of 2018 to CMS for review.

CMS hired Deloitte to review applications. Deloitte approved, with full funding, six of the projects and denied two projects as lacking clear evidence of a direct impact on the quality of life of the residents.

DMAS has contracted with six partners to implement the six approved projects. These projects will receive funding for the first year, with additional funding contingent on results and status reports of deliverables. A statewide learning and sharing network has been requested, and DMAS is currently working to build a platform for resource and information sharing. DMAS anticipates continuing this process in the coming years, and accepting applications each year for the use of CMP Funds.

Project Title	Amount Granted
Person-Centered Trauma-Informed Care Training	\$62,959
Advanced Nurse Aide Revitalization Project for Rockingham county & surrounding areas.	\$149,800
Restorative Sleep Program	\$101,482
Reducing Preventable Rehospitalizations	\$273,461
Music and Memory Initiative	\$550,000
Holistic Wellness	\$150,000
<i>3 yr. period</i> <i>Total</i>	\$1,287,702

Project(s) Overview

Person-Centered Trauma-Informed Care Training: \$62,959

Virginia Commonwealth University & the Family and Children’s Trust Fund of Virginia intend to develop a multi-modal resilience-training program. The program is

focused on teaching resilience skills to the direct care workforce and building trauma-informed and resilience-focused organizational cultures within licensed nursing facilities and SNFs that provide rehabilitative services.

Advanced Nurse Aide Revitalization Project for Rockingham Co: \$149,800

LeadingAge Virginia will pilot this project and develop a curriculum for certified nurse aides (C.N.A.) to receive advanced certification to improve the care and well-being of nursing facility residents. An educational framework will be developed using the curriculum and provide training to C.N.A.s to enable them to receive the advanced certification to provide enhanced care to nursing facility residents.

Restorative Sleep Program in Virginia: \$101,482

The Riverside Center for Excellence in Aging will coordinate this project that will implement the person-centered and evidence-based Restorative Sleep Program in two nursing facilities in Virginia. The project will also form a learning collaborative allowing interested nursing facilities, state surveyors, and ombudsmen in Virginia to receive training on restorative sleep and real-time insight on how to implement the program.

Reducing Preventable Re-hospitalizations: \$273,461

Virginia Health Care Association will provide training and resources to nursing facility staff and administrators, as well as hospital emergency department and case management staff, on the INTERACT Quality Improvement Program using the INTERACT 4.0 Tools. These tools are designed to improve the overall quality

of care for nursing facility residents using early identification, evaluation, management, documentation, and communication about acute changes in condition of residents in nursing facility and other care settings.

The Music & Memory Initiative : \$550,000

George Mason University proposes this project to implement and sustain a person-centered, non-pharmacological intervention (MUSIC & MEMORY®) for Virginia nursing facility residents with dementia that will positively affect behavior and stimulate emotions. The project also provides continuous, web-based, micro-learning modules that help direct care workers and other staff who closely interact with the residents to understand the value of personalized music and how and when to use it.

Holistic Wellness Program: \$150,000

Birmingham Green will develop a three-year holistic wellness program, which will utilize an engagement technology entitled: Birdsong (ref to www.wcbay.com/news) and embrace the Eden Principles designed by Dr. Bill Thomas. This program uses personalized computer tablets that are person-centered and user friendly to enhance and engage with elders. The components of the project are: An education component that offers Eden Alternative training to team members, and an engagement component, a person-centered, easy to use, touch screen bedside computer tablet for use by elders, designed to engage brain function, and add quality to their life. The interactive technology enhances and engages brain function enabling elders to remain connected to family and friends while enhancing or maintaining their cognitive skills.