



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

Mr. Dan Timberlake  
Director, Department of Planning and Budget

FROM: Karen Kimsey *kh*  
Director, Virginia Department of Medical Assistance Services

SUBJECT: Annual Report: Civil Money Penalties (CMP) Funds – FY2019

This report is submitted in compliance with the Virginia Acts of the Assembly – Item 307 Q.1 of the 2018 Appropriations 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 persona/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.

KK/kb

Enclosure

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

# Annual Report: Civil Monetary Penalty (CMP) Funds- FY2019

A Report to the Virginia General Assembly

October 1, 2019

## Report Mandate:

*The 2018 Appropriations Act Item 307 Q. 1. states “Q.1. 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.*

*2. Of the amounts appropriated in Q.1. of this Item, up to \$175,000 the first year and \$175,000 the second year from special funds may be used for the costs associated with administering CMP funds.*

*3. Of the amounts appropriated in Q.1. of this Item, up to \$500,000 the first year and \$1,175,000 the second year from the special funds may be used for special projects that benefit residents and improve the quality of Nursing Facilities.*

*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.*

*5. No spending or activity authorized under the provisions of paragraph Q. of this Item shall necessitate general fund spending or require future obligations to the Commonwealth.*

*6. The department shall maintain CMP special fund balance of at least \$1.0 million to address emergency situations in Virginia's nursing facilities.*

## About DMAS and Medicaid

***DMAS's mission is to improve the health and well-being of Virginians through access to high-quality health care coverage.***

DMAS administers Virginia's Medicaid and CHIP programs. Through the Medallion 4.0 and Commonwealth Coordinated Care (CCC) Plus managed care programs, more than 1 million Virginians access primary and specialty health services, inpatient care, behavioral health, and addiction and recovery treatment services. In addition, Medicaid long-term services and supports enable thousands of Virginians to remain in their homes or to access residential and nursing home care.

Medicaid members historically have included children, pregnant women, parents and caretakers, older adults, and individuals with disabilities. In 2019, Virginia expanded the Medicaid eligibility rules to make health care coverage available to close to 400,000 newly eligible, low-income adults.

Medicaid and CHIP (known in Virginia as Family Access to Medical Insurance Security, or FAMIS) are jointly funded by Virginia and the federal government under Title XIX and Title XXI of the Social Security Act. Virginia generally receives a dollar-for-dollar federal spending match in the Medicaid program. Medicaid expansion qualifies the Commonwealth for a federal funding match of no less than 90 percent for newly eligible adults, generating cost savings that benefit the overall state budget.

## **Executive Summary**

In 2019 the Department of Medical Assistance Services (DMAS) received four applications for Civil Monetary Penalty (CMP) funds. Two applications were approved by the Centers for Medicare and Medicaid Services (CMS) and received funding for the first year with additional funding contingent on results achieved. The six projects approved for funding in 2018 continue to operate. The total amount of revenue collected for fiscal year 2019 was \$1,859,870.12 and the total of spending activities was \$334,629.

## **Background**

CMP is a monetary penalty that CMS may impose this type of penalty against skilled nursing facilities (SNFs), nursing facilities (NFs), and dually-certified SNFs/NFs for either the number of days or for each instance 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) 42 Part 488.430). The requirements for participation with Medicare and Medicaid for Long Term Care (LTC) facilities can 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. The General Assembly requires the amount of this penalty to be used for projects. CMP funds are used for projects which directly improve the quality of life for individuals in nursing facilities.

## **Funding Parameters**

Allowable project periods cannot exceed three (3) years. Federal guidelines for CMP funds prohibit extensions, including no-cost extensions. Such funding is not guaranteed.

## **Relocation Expenses**

The Commonwealth has set aside \$500,000 to be utilized to cover the cost of (1) Individuals who must be relocated from a facility which is facing involuntary closure; or, (2) Facilities that are 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; and
- Facility improvement initiatives (including joint training of facility staff and surveyors or 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 that 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; and
- Supplementary funding of federally required services.

## **Spending Activities and Actions Taken to Date**

During the previous year, Virginia collected \$1,859,870.12 in penalties, with special project spending totaling \$334,629. In the second year of implementation of a formal process for CMP project applications, following the directive from CMS, DMAS received four applications, of which two were approved. Applications were solicited and reviewed by DMAS prior to being submitted to CMS in May 2019. After initial review and a request for additional information, DMAS was informed of the final decision from CMS and is contracting with the two approved projects. These projects are: *The Peer Mentoring Program at Westminster Canterbury Lynchburg, Inc.* and *Vohra's Virginia Wound Care Excellence Program for Certified Nursing Facilities*. The new projects will receive funding for the first year with additional funds contingent on results and deliverables. The six projects approved in 2018 continue to operate.

2018 Projects		Amount Granted	
Person-Centered Trauma-Informed Care Training		\$62,989	
Advanced Nurse Aide Revitalization Project for Rockingham county & surrounding areas		\$149,800	
Restorative Sleep Program		\$101,482	
Reducing Preventable Rehospitalizations		\$280,289	
Holistic Wellness		\$286,050	
Music and Memory Initiative		\$567,099	
Year 1	Year 2	Year 3	Total
\$582,434	\$491,756	\$373,519	\$1,447,709

During the previous funding round in 2018, applicants requested a statewide learning and sharing network. DMAS recently hired an additional CMP analyst who will research efforts in other states of improving communication among funded projects. The goal is to complete research over the next few months and implement a platform during the Fall of 2019.

## 2018 Project Updates

### Person Centered Trauma-Informed Care Training

The project is progressing on schedule. The stakeholder group, which will provide insight and assist with outreach and planning, was recruited and had their initial meeting. Several trainings and webinars that elicited feedback via surveys have been conducted at the four nursing facilities that were recruited into the project. The survey and focus group data was analyzed to inform the development of the trauma-informed, resilience-focused curriculum. The next step will be utilizing this curriculum to conduct trainings for staff of the four nursing facilities involved in the project.

### Advanced Nurse Aide Revitalization Project for Rockingham County

The focus of the first year of funding has been to develop the curriculum for certified nurse aides (C.N.A.) to receive advanced certification to improve the care and well-being of nursing facility residents. The curriculum is divided into four units, two of which have been completed. The project anticipates that all four units of the curriculum will be completed and submitted to the Board of Nursing by September 30, 2019.

2019 Projects		Amount Granted
Virginia Wound Care Excellence Program for Certified Nursing Facilities		\$90,889
Peer Mentoring Program		\$229,680
Year 1	Year 2	Total
\$225,625	\$94,944	\$320,569

### Restorative Sleep Program

Year one of the Restorative Sleep Program has been focused on creating a positive night time environment by addressing five sleep disturbances. Education and training have been a priority in the initial phases of the project. The project consultant has led five coaching calls with the two nursing facilities involved in the project and has facilitated two workshops with nursing facility staff and other stakeholders. The first two workshops, in a series of four, provided an overview of the Restorative Sleep Program and its importance. Additionally, the project conducted its initial baseline audit followed by audits for the top two sleep disturbances: noise and light. Actigraphy (*a non-invasive method for monitoring human rest/activity cycles*) watches are being used to measure the sleep/wake cycles, light intake, and activity level of residents. The data obtained from the watches will inform individual restorative sleep plans.

### Reducing Preventable Rehospitalizations

The project provided three unique trainings at five separate locations to licensed nursing facilities and hospitals across the Commonwealth. The trainings included strategies and resources for using and implementing the INTERACT 4.0 quality improvement tools to coordinate communication between nursing facilities and hospitals. Depending on the date of the training, follow up communication either has been sent or will be sent to attendees, with the intent to obtain feedback and status updates.

### Holistic Wellness

The training of team members and the use of interactive technology, designed to enable older adults to remain connected to family and friends, will allow the project to demonstrate a decrease in the use of anti-psychotic medications, improvements in cognitive focus, and a reduction in falls. The components of the project are two pronged: An education component that offers Eden Alternative training to team members, and an engagement component, the Birdsong Initiative: a program that uses six personalized computer tablets that are person-centered and user friendly. Two phases of the Eden Alternative trainings have been conducted. The

project team is working to implement the Birdsong Project aspect of the program in one neighborhood at the Birmingham Green nursing facility. The staff who will be assigned to the test group have been identified and tablets have been ordered.

### Music and Memory Initiative

The project team is working to recruit 20 nursing facilities into the first year of the project, which implements and sustains a person-centered, non-pharmacological intervention (MUSIC & MEMORY®) for Virginia nursing facility residents with dementia. The project team has been able to maintain the infrastructure for implementing the program and has completed data collection in at least six nursing facilities. The first meeting of the project advisory board was held in June 2019. The project team also created a website containing training modules.

2018 Projects Year 2 Budget Totals (2019-2020)		
Project Name	Agency	Year 2 Budget
Person-Centered Trauma-Informed Care Training	VCU and FACT	\$20,265
Advanced Nurse Aide Revitalization Project	LeadingAge Virginia	\$53,200
Restorative Sleep Program	Riverside Center for Excellence in Aging	\$31,861
Reducing Preventable Rehospitalizations	Virginia Health Care Association	\$90,977
Holistic Wellness Program	Birmingham Green	\$93,350
Music and Memory Initiative	George Mason University	\$202,103
		<b>Total: \$491,756</b>

### 2019 Project(s) Overview

#### Virginia Wound Care Excellence Program for Certified Nursing Facilities

The purpose of the project is to:

- Educate and certify 150 nurses in wound care;
- Close the knowledge gap in the care of chronic wounds; and
- Help address the high prevalence and expense of chronic wounds in skilled nursing facilities.

Learning materials designed and written by experienced wound care physicians will be made available to 150 eligible scholarship recipients via a dedicated website established specifically for Virginia. The educational material consists of eleven courses, downloadable study guides, a certifying final exam, and optional continuing education credits with the certification of completion.

### Peer Mentoring Program at Westminster Canterbury Lynchburg

Westminster-Canterbury of Lynchburg seeks to advance its Person Directed Living (PDL) culture integration by establishing a Peer Mentoring Program. The Peer Mentors will advance the training and integration of new and existing direct care partners (*who are CNAs*) into their household model of service delivery. Through collaboration with PHI National, the Program Manager will research and develop the criteria for the Peer Mentor Program and the Household Orientation Program. These curricula will provide mentors with the resources needed to train, guide, coach, and assist CNAs within the household utilizing person directed practices. Implementation of these programs consists of program management, an advisory committee, a planning phase, an implementation phase, and a final report.

2019 Project Year 1 Budget Totals (2019-2020)		
Project Name	Agency	Year 2 Budget
Peer Mentoring Program	Westminster Canterbury Lynchburg, Inc.	\$137,736
Virginia Wound Care Excellence Program for Certified Nursing Facilities	Vohra Wound Physicians of FL, LLC	\$90,889
		<b>Total: \$228,625</b>
<b>2019-2020 Total: \$720,381</b>		