



COMMONWEALTH of VIRGINIA
Department of Medical Assistance Services

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MEMORANDUM

TO: The Honorable Janet D. Howell
Chairman, Senate Finance and Appropriation Committee

The Honorable Luke E. Torian
Chairman, House Appropriation Committee

The Honorable Mark D. Sickles
Vice Chairman, House Appropriations Committee

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

SUBJECT: Annual Report: Civil Monetary Penalty (CMP) Funds – FY2020

This report is submitted in compliance with the 2020 Virginia Acts of the Assembly, Appropriations Act –Item 317 R.4., which states:

“Out of this appropriation, \$1,995,000 the first year and \$2,985,000 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.

KK/cr

Enclosure

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

Annual Report: Civil Monetary Penalty (CMP) Funds- FY2020

A Report to the Virginia General Assembly

October 1, 2020

Report Mandate:

The 2020 Appropriations Act Item 317 R. 1. states, "R.1. Out of this appropriation, \$1,995,000 the first year and \$2,985,000 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 R.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 \$1,320,000 the first year and \$2,310,000 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 R. 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 for more than 1.6 million Virginians. Members have access to primary and specialty health services, inpatient care, behavioral health as well as 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 more than 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 2020, the Department of Medical Assistance Services (DMAS) used Civil Monetary Penalty (CMP) funds to provide residents of 195 nursing facilities in the Commonwealth with communicative technology in response to the COVID-19 pandemic. The technology allows residents of nursing facilities to communicate with their families and to attend telehealth visits with outside providers. This initiative followed guidance from the Center for Medicare & Medicaid Services (CMS) for infection control and prevention in nursing facilities in response to COVID-19.

DMAS, with permission from CMS, postponed the regular 2020 CMP cycle because of COVID-19. Prior to the postponement, the agency received 16 cover letters and six full applications to use CMP funds for special projects. DMAS is holding these for review until the 2021 CMP cycle.

Ongoing projects, funded in previous cycles, continued to operate on schedule until the onset of COVID-19. The majority of projects experienced interruptions to project activities during the last quarter of the state fiscal year (SFY). Of the eight projects receiving ongoing funding, four were scheduled to conclude by the end of SFY 2020. Two of these projects signed amended contracts to extend their work through December of 2020 with no additional funding. The other two projects successfully completed their activities as planned. The remaining four projects are not scheduled to conclude until the end of SFY 2021.

On July 1, 2019, the CMP Fund was at \$11,059,064. During the year, nursing facility penalty payments received totaled \$2,016,636. DMAS spent most of the FY20 appropriation on special projects. This resulted in the CMP Fund having an end of year balance of \$12,045,279. The 2020 General Assembly increased the appropriation authority to \$1,320,000 for SFY 2021, allowing DMAS to further expand the program.

Background

CMP is a monetary penalty that CMS may impose against skilled nursing facilities (SNFs), nursing facilities (NFs), and dually-certified SNF/NF 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.

Funding Parameters

Projects can be awarded for a maximum of three (3) years. Receipt of funding past the first year is contingent on results and deliverables.

Entities receiving CMP funds must:

- Be qualified and capable of carrying out the intended project or use;
- Not be in any conflict of interest relationship with the entity or entities that will benefit from the intended project or use; and
- Not be paid by a State or federal source to perform the same function as the CMP project or use.

Relocation Expenses

The Commonwealth has set aside \$1,000,000 to be utilized to cover the cost of (1) Individuals who must be relocated from a facility which is facing involuntary closure; (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.

COVID-19 Communicative Technology Initiative

In 2020, CMS launched the Communicative Technology initiative in response to the COVID-19 and issued guidance for Infection Control and Prevention of COVID-19. Nursing facilities could request up to \$3,000 in CMP funds per facility to purchase devices and accessories for residents to share at a ratio of one device for every 7-10 residents. Devices must be able to support both virtual social and telehealth visits.

COVID-19 Communicative Technology Allowable Use of Funds

- Devices that are able to support virtual social and telehealth visits;
- Adaptive accessories such as headphones, tripods, and protective covers; and
- Cleaning and disinfection products that appear on the EPA's Disinfectant List for Use Against SARS-CoV-2 and are in accordance with recommendations of the device manufacturer.

COVID-19 Communicative Technology Initiative Prohibited Use of Funds

- Travel;
- Internet or software subscription fees;
- Administrative fees; and
- Indirect costs such as staff fringe benefits or facility maintenance.

Spending Activities and Actions Taken to Date

On July 1, 2019, the total balance of the CMP Fund was \$11,059,064. The CMP Fund balance was \$12,045,279 on June 30, 2020. Penalties received during the year totaled \$2,016,636.

Expenditures during the SFY include funds for ongoing projects approved in previous cycles and for the Communicative Technology initiative.

SFY 2019 Projects Update

Person Centered Trauma-Informed Care Training

The project concluded on schedule in November of

2019. DMAS contracted with the VCU School of Gerontology for a project cost of \$62,667 over two years.

VCU Gerontology recruited four nursing homes to engage in designing trauma-resilience training for certified nursing assistants (CNAs). Fifty-four CNAs participated in nine training sessions on trauma-informed care. Ninety-five interdisciplinary team members from 21 nursing facilities participated in online or in-person trainings using the trauma-informed training curriculum. Follow up surveys of participants indicated significant increases in knowledge, confidence, and application of concepts. Through testimonials, participants expressed intent to make behavior and service delivery changes.

Advanced Nurse Aide Revitalization Project for Rockingham County

Using \$149,800 in CMP funds over three years, the project, led by LeadingAge Virginia, is creating and delivering a curriculum for advanced certification for certified nurse aides (CNA). Not only will CNAs learn additional skills to improve the care and well-being of nursing facility residents, but the certification creates a career path and advancement ladder that will lead to staff retention and decrease burnout among CNAs. The four units of the curriculum include:

- Leadership and Mentoring Skills;
- Care of the Resident with Cognitive Impairment;
- Restorative Care; and
- Wound Care.

The Board of Nursing approved the curriculum, and the Blue Ridge Community College is offering the first semester, August 18 through November 5, 2020. This is a delayed start date due to COVID-19.

Restorative Sleep Program

DMAS contracted with Riverside Center for Excellence in Aging and Lifelong Health (RCEALH) for a project cost of \$101,482 over two years to conduct the Restorative Sleep Program. The program focuses on creating a positive nighttime environment by addressing common sleep disturbances. A consultant provides education and training on sleep disturbances, their effects, and methods to address them. Workshops facilitated by the consultant are open to other nursing facilities, while CMP funds are used to implement changes in two specific facilities. The project hosted three of the four planned workshops, but COVID-19 prevented the fourth workshop from occurring. Thus, the project could not implement interventions based on knowledge gleaned from this final workshop. RCEALH signed an amended agreement with DMAS to continue their work through December 31, 2020, at no additional cost to their original budget.

Reducing Preventable Hospital Readmissions

Virginia Health Care Association (VHCA), for a cost of \$280,289 over two years, is facilitating a series of statewide training sessions conducted by Pathway Health through which providers receive training on the INTERACT 4.0 Tools. The intent of these tools is to coordinate communication between nursing facilities and hospitals to elevate the overall quality of care for residents within Virginia nursing facilities by reducing preventable hospital readmissions. Over the past year, VHCA invited all licensed nursing facilities and hospitals that participated in the first-year training sessions to attend the second round of training days. These sessions intend to bring acute and post-acute providers together to use data and for collaboration between care settings to continue to reduce preventable hospital readmissions. COVID-19 interrupted the project's training schedule. A signed amendment agreement with DMAS will continue their work through December 31, 2020, at no additional cost to their original budget.

Holistic Wellness

The components of the project, led by Birmingham Green, involve a two-pronged approach: 1) An education component that offers the person-centered Eden Alternative training to team members, and 2) an engagement component, the Birdsong Initiative: a program for residents utilizing personalized person-centered and user-friendly computer tablets. The Birdsong Initiative began its second phase in January, offering tablets to a new set of residents, but experienced interruptions due to COVID-19. A three-day Eden Alternative Training for staff members occurred as scheduled in early March, but ongoing training is on hold. The contracted cost of the project is \$298,050 over three years.

Music and Memory Initiative

DMAS contracted with George Mason University (GMU), for a project cost of \$567,100 over three years 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. Continuous, web-based, micro-learning modules help staff who closely interact with the residents to understand the value of personalized music and how

and when to use it. As facilities have entered the project on a rolling basis, the project has concluded data collection in some facilities and is working to recruit new facilities into the project. In other facilities, the intervention is on hold due to COVID-19 visitor restrictions.

SFY 2020 Projects Update

Virginia Wound Care Excellence Program for Certified Nursing Facilities

VOHRA Wound Physicians successfully completed their project on schedule at the end of June 2020, focused on wound care, which is a major challenge within nursing facilities, causing significant expense, and decreasing the quality of life of residents. The project curriculum was comprised of eleven courses, downloadable study guides, and a certifying final exam. The project met its goal by virtually educating and certifying 150 nurses in wound care. After completion of the program, the number of long-stay residents with pressure ulcers dropped by 43% in participating facilities. The project spent the entire \$90,889 in contracted funds.

Peer Mentoring Program at Westminster Canterbury Lynchburg

Westminster-Canterbury of Lynchburg is working with a consultant, PHI, to develop a curriculum for a Peer Mentoring Program designed to advance a culture of Person Directed Living (PDL). This curriculum will provide peer mentors with the resources needed to train, guide, coach, and assist CNAs within the household utilizing person directed practices. Implementation of the project consists of program management, an advisory committee, a planning phase, an implementation phase, and a final report. The consultant is continuing to work on curriculum development, but the program team bi-weekly meetings focusing on implementation are on hold due to COVID-19. The contracted amount over two years is \$229,680.

COVID-19 Communicative Technology

DMAS approved 195 facilities to use CMP funds to purchase communicative technology for a total cost of \$491,523 in CMP funds.