



# 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 – FY2021

This report is submitted in compliance with the 2021 Virginia Acts of the Assembly, Appropriations Act –Item 317 R.4., which states:

*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 Money Penalties (CMP) Funds- State Fiscal Year 2021

A Report to the Virginia General Assembly

October 1, 2021

## Report Mandate:

*The 2020 Appropriations Act Item 317 R. 1. states, "R.1. Out of this appropriation, \$1,545,000 the first year and \$2,535,000 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 \$225,000 the first year and \$225,000 the second year from special funds may be used for the costs associated with administering CMP funds.*

*3. Of the amounts appropriated in R.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.*

*7. The Department of Medical Assistance Services is authorized to administratively request up to \$2,000,000 of additional special fund appropriation for special projects if 1) the appropriated amounts in R.3. are insufficient; and 2) such projects and costs are approved by the Centers for Medicare and Medicaid Services (CMS) for the Civil Money Penalty Reinvestment State Plan. The Department of Planning Budget shall approve such requests provided the required conditions are met.*

## 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 1.8 million Virginians. Members have access to primary and specialty health services, inpatient care, dental, 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 500,000 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**

During State Fiscal Year (SFY) 2021, the Department of Medical Assistance Services (DMAS), with approval from the Center for Medicare & Medicaid Services (CMS), postponed the request for applications on the use of Civil Monetary Penalties (CMP) because of the COVID-19 pandemic. 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 SFY. In 2020 (SFY 2021), CMS granted the states the ability to use CMP funds in response to the COVID-19 pandemic for two special projects: Communicative Technology and In-Person Visitation Aids to help ease the negative effects of COVID-19 on the highly impacted residents of nursing facilities.

From January through March 2021, the SFY 2022 application cycle began with the solicitation of projects from qualified applicants. DMAS received nineteen complete applications by the March 31, 2021 deadline. The applications were reviewed and forwarded to CMS for final funding determination for the SFY 2022 cycle.

On July 1, 2020, the CMP Fund was at \$12,045,279. During the year, nursing facility penalty payments received totaled \$3,386,698. With the cancellation of the SFY 2021 cycle and with ongoing projects experiencing interruptions, the expenditures totaled \$542,913. This resulted in the CMP Fund having an end-of-year balance of \$14,879,970. The 2020 Appropriations Act increased the appropriation authority to \$1.32 million for SFY 2021 and \$2.31 million for SFY 2021, allowing DMAS to expand the program further.

Expenditures during the SFY include funds for ongoing projects approved in previous cycles and for the two CMS approved COVID-19 initiatives.

## **Background**

CMPs are monetary penalties 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. Fifty percent of the penalties that are levied and paid are then disbursed to states to be reinvested to protect or improve the quality of life for individuals residing in nursing facilities. DMAS has been given the responsibility to administer these funds and to provide direct oversight of the projects.

## **Funding Parameters**

Projects can be awarded for a maximum of three (3) years. The 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 that 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 three years);
- Temporary manager salaries or Ombudsman salaries; and
- Supplementary funding of federally required services.

## **SFY 2020 and SFY 2021 Project Updates and Special Initiatives in Response to COVID-19**

### **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.

Under this initiative, DMAS used 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 CMS for infection control and prevention in nursing facilities in response to COVID-19.

Facilities approved for the COVID-19 Communicative Technology Initiative used CMP funds to procure devices such as laptops and tablets, 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 In-Person Visitation Aid Initiative**

In September 2020, CMS launched the In-Person Visitation Aid Initiative that allowed for the use of CMP for nursing facilities to purchase tents for outdoor visitation and/or clear dividers (e.g., Plexiglas or similar products) to create a physical barrier to reduce the risk of transmission of COVID-19 during in-person visits. Funding for tents and clear dividers were limited to a maximum of \$3,000 per facility.

DMAS received and approved applications from 128 nursing facilities providing a direct benefit to 15,125 residents. DMAS disbursed CMP funds in excess of \$276,000 for 145 tents and 545 dividers.

### **Peer Mentoring Program at Westminster Canterbury Lynchburg**

Westminster-Canterbury of Lynchburg is working with a consultant, Paraprofessional Healthcare Institute (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. After a pause due to COVID-19, the project is beginning to resume curriculum development and implementation. The contracted amount over two years is \$229,680.

### **SFY 2019 Project Updates**

The following SFY 2019 Projects were temporarily paused due to COVID-19 restrictions and precautions. DMAS CMP team granted the projects no-cost extensions on their contracts. Project coordinators continued to report on the status of the projects to the DMAS CMP team. The required reporting of the project statuses for SFY2021 indicated that projects are beginning to resume cautiously.

### **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 (CNAs). 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 course. 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 focused on creating a positive nighttime environment by addressing common sleep disturbances. A consultant provided education and training on sleep disturbances, their effects, and methods to address them. Workshops facilitated by the consultant were open to other nursing facilities, while CMP funds were used to implement changes in two specific facilities. The project hosted three of the four planned workshops on schedule, but COVID-19 caused the fourth workshop to be delayed. RCEALH signed an amended agreement with DMAS to continue their work through December of 2020 at no additional cost to their original budget and was able to deliver the fourth workshop virtually. The project successfully concluded meeting all goals and deliverables.

## Reducing Preventable Rehospitalizations

Virginia Health Care Association (VHCA), contracted for a cost of \$280,289 over two years to facilitate 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. The second round of training days was delayed due to COVID-19. 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 rehospitalizations. A signed amendment agreement with

DMAS will continue their work through September 30, 2021, at no additional cost to their original budget. The project is considering alternate formats for delivering the training.

## 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 tablets have provided an additional benefit to residents during the COVID-19 pandemic, allowing residents to connect with loved ones safely. However, the Eden Alternative Trainings were paused due to the pandemic. The project is cautiously resuming activities on a modified timeline. 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. The intervention is slowly resuming activities in already participating nursing facilities and attempting to recruit more facilities.