



COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

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MEMORANDUM

TO: The Honorable Janet D. Howell
Chair, Senate Finance Committee

The Honorable Barry D. Knight
Chair, House Appropriations Committee

Michael Maul
Director, Department of Planning and Budget

FROM: Cheryl Roberts
Director, Virginia Department of Medical Assistance Services

SUBJECT: Annual Report: Civil Monetary Penalty (CMP) Funds – FY2022

This report is submitted in compliance with the 2022 Appropriation Act – Item 308.Q.5., 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 and Appropriations 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) 664-2660.

CR

Enclosure

Pc: The Honorable John Littel, Secretary of Health and Human Resources

Annual Report: Civil Money Penalties (CMP) Funds- FY2022

A Report to the Virginia General Assembly

November 10, 2022

Report Mandate:

The 2022 Appropriations Act Item 308.Q. states, "Q. 1. Out of this appropriation, \$6,035,000 the first year and \$6,035,000 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 \$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 Q.1. of this Item, up to \$2,310,000 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. Out of the amounts appropriated in Q.1. of this item, \$3,500,000 the first year and \$3,500,000 the second year from special funds shall be used for a quality improvement program addressing nursing facility capacity building. The program design may be based on the results of the Virginia Gold Quality Improvement Program pilot project, to include peer mentoring, job-related and interpersonal skills training, and work-related benefits. The Department of Medical Assistance Services shall seek approval from the Centers for Medicare & Medicaid Services (CMS) to implement the program.

5. 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 and Appropriations Committees and the Director, Department of Planning and Budget.

6. 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.

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

8. 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 Q.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.

The mission of the Virginia Medicaid agency is to improve the health and well-being of Virginians through access to high-quality health care coverage.

The Department of Medical Assistance Services (DMAS) administers Virginia's Medicaid and CHIP programs for over 2 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 600,000 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% for newly eligible adults, generating cost savings that benefit the overall state budget.

Executive Summary

In State Fiscal Year (SFY) 2022, the Department of Medical Assistance Services (DMAS), with approval from the Centers for Medicare & Medicaid Services (CMS), reinstated the request for applications for the use of Civil Monetary Penalties (CMP) after postponing the solicitation due to the COVID-19 pandemic. Ongoing projects funded in previous cycles that experienced interruptions due to COVID-19 resumed activities on an adjusted timeline. In addition, CMS again granted the states the ability to use CMP funds in response to the COVID-19 pandemic for special projects: In-Person Visitation Aids, Personal Fans, and Air Cleaners. This initiative helps ease the adverse effects of COVID-19 on the highly impacted individuals in nursing facilities (NFs).

From January through March 2021, the SFY 2022 application cycle began with soliciting projects from qualified applicants. DMAS received seventeen 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, 2021, the CMP fund balance was \$14,879,970, with appropriation to spend \$2,535,000. During the year, NF penalty payments received totaled \$921,449. Fund expenditures totaled \$1,223,312. This resulted in the CMP fund having an end-of-year balance of \$14,578,107.

Expenditures during the SFY include funds for newly approved projects, ongoing projects approved in previous cycles, and the CMS-approved COVID-19 initiative.

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 in 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 use of CMP funds. Fifty percent of the penalties levied and paid are then disbursed to states to be reinvested to protect or improve the quality of life for individuals residing in NFs.

DMAS is responsible for administering these funds and providing direct oversight of the projects.

Funding Parameters

Projects can be awarded funds for up to three (3) years. However, funding beyond 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 individuals from their current NF to an approved alternate temporary site when an NF experiences an emergency or evacuation.

Allowable Use of Funds

- Projects that support NF individuals 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

- Capital expenses or improvements to a facility;
- Payment for any item or service that is already the responsibility of the NF;
- Projects or activities intended to achieve compliance with federal or state guidelines;
- Projects, items, or services that are not related to improving the quality of life and care of NF individuals;
- 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.

CMS Special Initiatives for COVID-19

In-Person Visitation Aid Initiative

During SFY 22, CMS continued the In-Person Visitation Aid Initiative that allowed for the use of CMP funds for NFs to purchase tents for outdoor visitation and 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. DMAS disbursed \$276,068 in for 545 Dividers/Plexi-glas, and 145 Tents.

Portable Fans and Room Air Cleaners

In February 2022, CMS launched another initiative to purchase portable fans and air cleaners using CMP funds. Funding is limited to a maximum of \$3,000 per facility.

DMAS received and approved applications from 50 NFs providing a direct benefit to 5,424 NF individuals. DMAS disbursed CMP funds in excess of \$149,000 for 141 portable fans and air cleaners in SFY22.

SFY 2019 Project Updates

The following SFY 2019 Projects were temporarily paused due to COVID-19 restrictions and precautions. With approval from CMS, no-cost extensions were granted to projects on their contracts. Project coordinators continued to report on the status of the projects. The required reporting of the project statuses for SFY2022 indicated that projects resumed cautiously.

Advanced Nurse Aide Revitalization Project for Rockingham County

Using \$149,800 in CMP funds, LeadingAge Virginia is creating and delivering a curriculum for advanced certification for certified nurse aides (CNAs). CNAs will learn additional skills to improve the care and well-being of NF individuals, and the certification also 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 individual with Cognitive Impairment;
- Restorative Care; and
- Wound Care.

The Virginia Board of Nursing approved the curriculum, and the Blue Ridge Community College has offered two of the three contracted semesters. The project has been extended until June 30, 2023, due to a delay in course offerings in light of the COVID-19 pandemic.

Holistic Wellness

The components of the project, led by Birmingham Green, involved a two-pronged approach: 1) An education

component that offered the person-centered Eden Alternative training to team members, and 2) an engagement component, the Birdsong Initiative: a program for individuals utilizing personalized person-centered and user-friendly computer tablets. The tablets have provided an additional benefit to individuals during the COVID-19 pandemic, allowing individuals to connect with loved ones safely. The project was completed on March 31, 2022, spending \$293,675.

Music and Memory Initiative

DMAS contracted with George Mason University (GMU) for a three year project to implement and sustain a person-centered, non-pharmacological intervention (MUSIC & MEMORY®) for Virginia NF individuals with dementia that will positively affect behavior and stimulate emotions. Continuous, web-based, micro-learning modules help staff who closely interact with the individuals to understand the value of personalized music and how and when to use it. COVID-19 caused interruptions to project activities, but two no-cost extensions allowed the intervention to resume activities when safe and feasible. The project successfully concluded on December 31, 2021, spending \$567,100.

Reducing Preventable Rehospitalizations

Virginia Health Care Association (VHCA) contracted for \$280,289 over two years to facilitate a series of statewide training sessions by Pathway Health through which providers receive training on the INTERACT 4.0 Tools. These tools intend to coordinate communication between NFs and hospitals to elevate the overall quality of care for individuals within Virginia NFs by reducing preventable hospital readmissions. These sessions intend to bring acute and post-acute providers together to use data and collaborate between care settings to continue reducing preventable rehospitalizations. COVID-19 delayed the training, and DMAS granted a no-cost extension through August 31, 2022.

SFY 2020 Project Updates

Peer Mentoring Program

Westminster-Canterbury of Lynchburg worked with a consultant, Paraprofessional Healthcare Institute (PHI), to develop a curriculum for a Peer Mentoring Program designed to advance a Person Directed Living (PDL) culture. This curriculum provided peer mentors with the resources needed to train, guide, coach, and assist CNAs within the household by utilizing person-directed practices. Implementation of the project consisted 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 successfully

concluded in December 2021, spending \$97,550 of the contracted \$229,680.

SFY 2022 Project Updates

In SFY 2022, after submitting nineteen applications to CMS for review and funding determinations, nine projects were approved by CMS to improve the quality of life or care for individuals in Virginia's NFs. Projects range in duration from one to three years and utilize a total of \$2,512,750.

Java Group Programs

In this cycle, three projects were approved to implement the Java Group Programs. The NF individual peer support and mentoring programs work together to reduce social isolation and loneliness. Further, these programs create opportunities for meaningful participation and emotional engagement.

The three entities approved to use CMP Reinvestment Funds to implement the Java Programs are:

Friendship Health and Rehab South

The facility entered into a contract with DMAS for a one-year program with a budget of \$10,319. The project successfully concluded on June 30, 2022, utilizing all allotted funds.

Birmingham Green

The one-year \$9,800 project experienced interruptions due to COVID-19, and the contract has been extended through December 31, 2022.

LeadingAge Virginia

LeadingAge Virginia contracted for two years to implement the Java Programs in 30 facilities at \$356,640.

Action Pact Household Model Training

Bridgewater Retirement Community contracted with DMAS to receive \$129,115 of CMP Reinvestment Funds over two years to implement. The project partners with Action Pact, a consulting company specializing in culture change, to provide training to improve NF individuals' quality of life through PersonFirst Care.

Opening Minds Through Art

Opening Minds Through Art is a three-year training and certification program open to all Virginia NFs. The program is a therapeutic group intervention for older adults living with dementia that provides inter-generational person-centered engagement by using the creation of abstract pieces of art to enhance the quality of life for individuals. This is a three-year contract with LeadingAge Virginia budgeted at \$1,083,382.

Culture Change Sustainability

Richfield Living nursing care individuals recently moved from the medical hallways model into the household model of the newly opened health center, thus requiring staff training to maximize the benefits for the individuals within this new physical environment. The project goal is to perpetuate Action Pact and Sapphire Dementia Partners staff training in the household model of care delivery to the point of sustainability and improved quality of each individual's life. The contract for \$100,200 has been extended beyond the original one year to December 31, 2022, due to interruptions from COVID-19.

Positive Approach to Care

This program, being conducted by Riverside Center for Excellence in Aging and Lifelong Health, is a series of interactive training workshops in NFs using Teepa Snow's evidence-based Positive Approach to Care® (PAC) philosophy and care partnering techniques, including Positive Physical Approach™ (PPA™) and Hand Under Hand™ (HUH™). Over the course of the three-year contract, learners will develop new skills related to approaching, caring, and connecting with people living with dementia, creating a positive and caring environment. The project aims to 1) certify additional PAC trainers in Virginia and 2) make sustainable improvements in the quality of dementia care in three NFs. The budget for this contract is \$263,703.

Development of a Trauma-informed Care: Resilience and Well-Being Toolkit

VCU Gerontology will develop the content for a stakeholder-designed Trauma-informed Care: Resilience and Well-being Toolkit created with NF provider input using the community-based participatory action research (CBPAR) approach. The final toolkit will be designed and built as an accessible, user-friendly digital product containing various best-practice resources and tools that users can download and apply to their communities. The three-year project has a budget of \$552,591.

Snoezelan Sensory Items

The Virginia Veterans Care Center created a Snoezelan space for individuals living with dementia. The Snoezelan space incorporates auditory stimulation and sensory activities that have been shown to enhance mood, stimulation, and cognition and increase awareness and attention in individuals. The project was successfully completed on June 30, 2022, utilizing \$6,848 of the \$7,000 contracted.