



COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

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October 20, 2023

MEMORANDUM

TO: The Honorable Janet D. Howell
Co-Chair, Senate Finance and Appropriations Committee

The Honorable George L. Barker
Co-Chair, Senate Finance and Appropriations Committee

The Honorable Barry D. Knight
Chair, House Appropriations Committee

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

SUBJECT: Annual Report: Civil Monetary Penalty (CMP) Funds – FY2023

This report is submitted in compliance with the 2023 Appropriations 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 contact me at (804) 664-2660.

CR/wrf

Enclosure

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

Annual Report: Civil Money Penalties Reinvestment Program (CMPRP) Funds- FY2023

A Report to the Virginia General Assembly

October 20, 2023

Report Mandate:

The 2022 Appropriations Act Item 308 Q.5. 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.

About DMAS and Medicaid

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 an approximate 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

FY 2023 CMP Fund Balance at a Glance	
Beginning Balance	\$14,578,107
Penalties Received	\$828,662
Expenditures	\$(1,874,949)
Ending Balance	\$13,531,821

FY 2023 Special Projects at a Glance		
Applications Received	17	\$3,318,739
Applications Approved	8	\$922,180
Ongoing Projects	4	\$1,067,781

In State Fiscal Year (SFY) 2023, the Department of Medical Assistance Services (DMAS), with approval from the Centers for Medicare & Medicaid Services (CMS), requested applications for the use of Civil Monetary Penalties (CMP). Ongoing projects funded in previous cycles continued project activities. In addition, CMS continued to allow states the ability to use CMP funds in response to the COVID-19 pandemic for special projects including 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 February 2022, the SFY 2023 application cycle began with soliciting projects from qualified applicants. DMAS received seventeen complete applications by the February 28, 2022 deadline. The applications were reviewed and forwarded to CMS for final funding determination for the SFY 2023 cycle.

On July 1, 2022, the CMP Fund was at \$14,578,107 with an appropriation to spend \$2,310,000 on special projects. During the year, NF penalty payments received totaled \$828,662. Fund expenditures totaled \$1,874,949. This resulted in the CMP Fund having an end-of-year balance of \$13,531,821.

Expenditures during the SFY include funds for newly approved projects, ongoing projects approved in previous cycles, the CMS-approved COVID-19 initiative, and costs associated with administering CMP Reinvestment funds. No funds were used for the quality improvement program as that program was still under development in SFY 2023.

Background

CMRPs 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 in special projects that 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 past the first year is contingent on results and deliverables.

Entities receiving CMP Reinvestment 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 and (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 to promote quality care and the wellbeing of nursing facility residents;
- Projects that support individual and family councils and other consumer involvement in assuring quality care in facilities; and
- Facility improvement initiatives approved by CMS (including joint training of facility staff and surveyors or technical assistance for facilities implementing quality assurance programs).

Prohibited Use of Funds

- Capital improvements to a facility;
- Payment for items or services that are already the responsibility of the NF;
- 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 individuals residing in nursing facilities;
- 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, Ombudsman salaries, salaries of NF staff;
- Supplementary funding of federally required services; and
- Nurse aide training (NATCEP)

CMS Special Initiatives for COVID-19

Portable Fans and Room Air Cleaners

During SFY 2023, CMS continued the initiative allowing NFs to use CMP Reinvestment Funds to purchase portable fans and air cleaners reduce the risk of transmission of COVID-19 during in-person visits. Funding is limited to a maximum of \$3,000 per facility.

DMAS received and approved applications providing a direct benefit to 5,103 nursing facility residents. DMAS disbursed over \$125,000 in CMP funds to 45 NFs for 160 portable fans and air cleaners in SFY 2023.

Prior Funded Projects Completed in SFY23

The following CMPRP Projects were funded prior to SFY 2023 and completed during SFY 2023. Some of these projects had previously experienced interruptions and other challenges related to the COVID-19 pandemic. With approval from CMS, DMAS granted no-cost contract extensions to projects as needed to accommodate for these challenges.

Advanced Nurse Aide Revitalization Project for Rockingham County

Using \$149,800 in CMP funds over four and a half years, LeadingAge Virginia created and delivered a curriculum for advanced certification for certified nurse aides (CNAs). CNAs learned additional skills to improve the care and well-being of nursing facility residents, and the certification also created a career path and advancement ladder to increase 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 project completed in June 2023 after delays in course offerings and the availability of staff to participate. At the conclusion of the final quarter, 22 of 30 CNAs successfully completed the program. Though the number of graduates fell short of the intended goal, the remaining funds were appropriately used to promote the Advanced CNA program, resources, and curriculum through the development of an *Advanced CNA Curriculum Toolbox*, created by LeadingAge Virginia to encourage other nurse aide education programs in Virginia to create a pathway to train and license more Advanced CNAs.

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 received training on the INTERACT 4.0 Tools. These tools 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 brought acute and post-acute providers together to use data and collaborate between care settings to continue reducing preventable rehospitalizations. VHCA completed all training webinars by July 31, 2022. The COVID-19 pandemic significantly impacted the project. However, modifying the trainings to a virtual format allowed 65% of licensed nursing facilities in the Commonwealth to foster relationships with referring hospital providers and receive the INTERACT materials.

The Java Project: Addressing Social Isolation and Loneliness

In SFY 2023, two projects continued implementation of the Java peer support and mentoring programs that focus on residents of NFs and work together to reduce social isolation and loneliness. Further, these programs created opportunities for meaningful participation and emotional engagement.

LeadingAge Virginia

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

All funds were utilized, and the project was completed in 22 NFs. The project provided an estimated:

- 1,191 Java Music sessions, with 750 individual residents participating in the Java Music program at their NFs, with average outcomes of:
 - Decrease in social isolation by 3.1 points on a 10-point scale.
 - Decrease in loneliness by 2.9 points on a 10-point scale.
 - Increase in happiness by 2.8 points on a 10-point scale.
- 1,074 Java Memory sessions, with 781 individual residents participating in the Java Memory program at their NFs, with average outcomes of:
 - Decrease in social isolation by 2.2 points on a 10-point scale.
 - Decrease in loneliness by 2.3 points on a 10-point scale.
 - Increase in happiness by 2.3 points on a 10-point scale.
- 237 Java Mentorship sessions, with 318 individual residents participating in the Java Mentorship program at their NFs, with average outcomes of:
 - Decrease in social isolation by 2.2 points on a 10-point scale.
 - Decrease in loneliness by 2.3 points on a 10-point scale.
 - Increase in happiness by 2.3 points on a 10-point scale.

Birmingham Green

Birmingham Green contracted with DMAS for \$9,800 to implement the program at their facility. Due to challenges from the COVID-19 pandemic, the contract was extended from twelve to eighteen months. The project concluded in December of 2022 with the following results:

- 184 residents participated in Java Music groups.
 - 67% improvement in social isolation
 - 77% improvement in loneliness
 - 73% improvement in happiness
- 98 residents participated in Java Memory Care groups.

- 62% improvement in social isolation
- 60% improvement in loneliness
- 60% improvement in happiness
- Four residents participated in the Java Mentorship program as mentors visiting six other residents. Birmingham Green incorporated Java Mentorship with Java Music groups.

Action Pact Household Model Training

Bridgewater Retirement Community contracted with DMAS to receive \$129,115 of CMP Reinvestment Funds over two years to support the change to a household model of care with training to strengthen the journey. The project partnered with ActionPact, a consulting company specializing in culture change, to provide training to improve the quality of life for nursing facility residents through PersonFirst Care. Despite lingering COVID-19 challenges and restrictions, and staffing issues, the project was completed in June 2023 with the successful creation of five training sessions: Cultural Orientation, Culture Orientation Refresher, Homemaker Training, Dining Training, and Leadership Lunch and Learns. Newly created Action Teams and the Dining Steering Team will work together to sustain the outcomes of the project.

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 was 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 was extended beyond the original one year, due to interruptions from COVID-19, and the project completed in March 2023.

Ongoing Projects

The following projects were funded prior to SFY 2023, were active in SFY 2023, and will continue into the next SFY.

Opening Minds Through Art

Leading Age Virginia continues the three-year project, budgeted at \$1,083,382, scheduled to conclude in June 2024. The training and certification program is 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. Year two of the three-year project wrapped up with the following outcomes:

- NFs with two certified trainees to date: 44
- NFs participating total: 45
- OMA Facilitator trainees certified to date: 86
- Host Site Scholarships granted through Art for the Journey: 11
- NFs with funds issued for art supplies: 44
- Next regional training locations identified: 4
- Approved applicants to date: 72

Positive Approach to Care

This program, 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. Financial and quarterly reports to DMAS reflect that the project is on track, showing signs of success and indicating completion by June 2024.

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

VCU Gerontology is developing 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 with a budget of \$552,591 is on track for successful completion in June 2024.

Next Steps in Dementia Care (NSDC)

TMF Health Quality Institute signed a 2-year contract with DMAS for \$682,184.54, effective July 1, 2022, for the NSDC Project. NSDC is a team-based approach to successfully address behavioral changes in persons with dementia using strategies proven to be effective. NSDC uses learning modules with video vignettes and concept videos to improve the staff's ability to recognize the causes of expressions of distress for each individual with dementia. This training will also help staff proactively learn to avoid and/or manage behaviors should they manifest, resulting in an improved quality of life for residents with dementia in Virginia's NFs. TMF is using its Virtual Learning Platform to provide NSDC education to staff in 60 Virginia NFs. Licensed nurses, who complete the program, will receive Continuing Nursing Education Units, and non-nurses will receive a certificate of completion. Ongoing reporting to DMAS indicates that the project is on track for successful completion.

SFY 2023 Projects

In SFY 2023, eight 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 \$2,318,249.

Reading2Connect Program

The Age-u-cate Training Institute is conducting a dynamic, staff-training program centered on books adapted for adults living with dementia. The program integrates into the life enrichment programs of participating NFs, fostering resident-centered and resident-directed activities. The contract is a 3-year project totaling \$445,071. The project will train four staff at 15 facilities across the Commonwealth on Reading2Connect coaching and implementation.

Companion Animals for Nursing Facility Residents

The Goodwin House project focuses on animal and resident interaction through regular visits from an animal vendor to four participating NFs; this 3-year project for \$144,680 addresses loneliness and social isolation.

Addressing the Impacts of Social Isolation with the StrongerMemory Program

CMS also approved Goodwin House to contract with DMAS for three years in the amount of \$324,908 for the StrongerMemory Program. To alleviate the decline many residents experienced during the COVID-19 pandemic, the project spreads an evidence-based intervention for improving cognitive function. The intervention is based on science and research that states simple math, reading aloud, and writing by hand stimulate the brain. The goal is that by the end of the three-year project period, 100 NFs in Virginia will implement StrongerMemory for a total of at 750 long-stay residents with mild cognitive impairment and that 80% of the residents that complete the program will see an improvement in cognitive function.

Therapeutic Equine Experience

The Goodwin House is implementing a three-year project in the contracted amount of \$384,000 that will allow residents of four facilities the opportunity to engage in Equine Assisted Therapy that includes seeing a working stable, learning the names of the horses and their history, writing poems and stories about their impressions, practicing mindfulness and movement. The expected outcomes include improved mood, decreased agitation, increased socialization, increased morale, improved self-esteem, and a decrease in tedium and boredom for participating residents.

The SNFClinic Project

Long Term Care Consultants (LTCC) was approved for The SNFClinic Project designed to address the issue of training current and new hires in an environment of high turnover rates. This project is an extension of CMP funded projects carried out by LTCC in several other states. SNF Clinic provides a centralized technology-based system for training, staff management, and resident care resources. Long Term-Care Consultants intends to implement the SNFClinic project in 25 CMS one-, two- and three-star rated nursing facilities in Virginia. The three-year contract with DMAS is for \$738,750.

iN2L (It's Never Too Late) Equipment and Software

Sitter-Barfoot and the Virginia Department of Veterans Affairs were each approved to contract with DMAS for three years at \$71,899 to deliver the iN2L program in their respective NFs over three years. This program and the associated equipment address the psychosocial and cognitive needs of the residents of NFs. iN2L utilizes touchscreen televisions and computers with access to person-centered computer-based experiences and activities. With the implementation of the iN2L program, the participating facility can provide personalized life-enriching, re-engaging, and redirecting activities to residents, resulting in an increased quality of life for all participants. The iN2L program aims to create experiences focused on each resident to foster camaraderie, meaning, and a sense of purpose.

Virginia's Wound Care Excellence Program

Vohra Wound Physicians was awarded \$147,042 to complete this one-year extension of their previously funded project in Virginia. The Virginia Wound Care Excellence Program is designed to provide virtual wound care training to improve the standard of care and close the existing knowledge gap in wound care. The project curriculum is designed and comprised of eleven courses, downloadable study guides, and a certifying final exam. The program awarded 158 wound care certificates to nurses across the state.