



Virginia

Regulatory
Town Hall

townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation	__22__ VAC_30__ -_50__
Regulation title	Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund
Action title	Amend CNI Regulations as result of Periodic Review
Date this document prepared	July 25, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

Commonwealth Neurotrauma Initiative (CNI) Trust Fund

A statement is added that requests for applications for grant moneys from the CNI trust fund shall be issued at the discretion of the advisory board and shall depend upon the availability of funds. This statement clarifies the conditions under which requests for applications will be made and informs the public that requests are not made on a regularly scheduled basis. Also added is a statement that applicants can now apply for grants to evaluate systems of services for people with traumatic brain injuries or traumatic spinal cord injuries. This addition allows applicants to apply for funding to conduct targeted evaluations of service systems or to determine the need for the development, expansion, or improvement of services. An existing statement in the regulation has been reworded to stress to applicants that grants are to be used to initiate research and programs but not to be used to maintain long-term funding. This is also emphasized by the addition of a statement that the advisory board shall accept applications that provide a plan for sustaining the proposed project following termination of a grant award. Applicants for grant funds must also include a description of efforts taken to ensure that the proposed project does not duplicate existing programs or services for persons with neurotrauma already available in the community. Applicants must also demonstrate a commitment to community planning with consumer groups, service providers, employers, relevant state and local agencies, and other funding sources which may be available. Finally, in the event of a decline in moneys in the CNI fund, the advisory board shall attempt to distribute moneys in a manner that is fair and equitable as possible to all projects. In the past, this only applied to projects with an anticipated duration greater than one year.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CNI means Commonwealth Neurotrauma Initiative

RFP means a request for proposals

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

§ 51.5-181 of the Code of Virginia states:

The Commissioner shall promulgate regulations establishing procedures and policies for soliciting and receiving grant applications and criteria for reviewing and ranking such applications, including, but not limited to, goals, timelines, forms, eligibility, and mechanisms to ensure avoidance of any conflicts of interest or appearances thereof. The Commissioner shall receive the recommendations of the Commonwealth Neurotrauma Initiative Advisory Board prior to promulgating or revising any such regulations.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The purpose of the proposed amendment to the CNI trust fund regulation is to conserve moneys in the fund and distribute the moneys equitably for their intended purpose. The proposed amendment emphasizes that requests for applications for moneys from the fund shall be issued by the advisory board only when the board determines that funds are available. The proposed amendment allows grantees to use the fund for evaluating existing programs as well as expanding, developing, and improving programs. This proposed amendment emphasizes original Code language that grant funds are to be used for initiating research projects or community-based rehabilitative programs. They are not to be used for long-term funding of projects. To ensure that applicants understand and plan for this, applications must contain a plan for sustaining the project upon termination of grant funds. In an effort to conserve funds, applicants are required to demonstrate that the proposed project does not duplicate existing programs. In the event of a decline in moneys in the fund, the board shall attempt to distribute moneys in a manner as fair and equitable as possible.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

There are no substantive changes in this request. The changes provide clarification to the existing regulation.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The proposed regulatory action poses no disadvantages to the public or the Commonwealth. The action's primary advantage is that it clarifies the existing regulation.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities in the Commonwealth that have an identified disproportionate impact.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Vanessa S. Rakestraw, Ph.D., CRC; 8004 Franklin Farms Dr, Henrico, VA 23229; fax number: (804) 662-7663; email address: Vanessa.Rakestraw@dars.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	These changes are meant to clarify the existing regulations and will not directly impact individuals, businesses or other entities positively or negatively.
Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	These changes are meant for clarification only and will not impact a Virginia-based organization, institution or small businesses from benefiting from the funds.
Benefits expected as a result of this regulatory proposal.	This regulatory proposal will provide clarification for entities applying for funding, for grantees awarded funding, and for the Advisory Board in its role to enforce and adhere to the regulations.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	There is no projected cost to the state to implement and enforce this regulatory proposal. It clarifies existing language.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	There is no direct cost to localities to implement and enforce this regulatory proposal. The CNI Trust Fund code allows for 5% of total funds to cover the costs of administering Fund, including the cost of providing staff support to the Advisory Board. The Advisory Board is an all-volunteer board.
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	There are no projected costs for these regulatory proposal changes.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

As a part of a periodic review, the department requested that the staff and Advisory Board of the CNI Trust Fund review this regulation to determine if any amendments were needed to make the regulation consistent with current practices of administering the trust fund. In order to incorporate the recommendations of the staff and Advisory Board, the department is proceeding with a Notice of Intended Regulatory Action. No other viable alternative is considered to meet the purpose of this regulation.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Alternative regulatory methods have been analyzed, and the agency has determined that the proposed regulatory amendment represents the least burdensome method of achieving the stated goals of applicable laws without adversely impacting small businesses, the public, or the agency. . This proposed regulation change clarifies wording and phrases in the current regulations that will allow grantees of the CNI Fund to better understand the process and guidelines when applying for grant funding. It will also assist the Advisory Board in making fair and equitable grant awards that are conducive to the purposes of the CNI Trust Fund.

Small business impact review report of findings

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The CNI Trust Fund was created in the Code of Virginia for the purpose of preventing traumatic spinal cord or brain injuries and improving the care of Virginians with those injuries. It is required by § 51.5-179 of the Code of Virginia that the Commissioner promulgate regulations to establish procedures and policies for soliciting and receiving grant applications and criteria for reviewing and ranking such applications. The NOIRA for these amended regulations was submitted in response to a periodic review. No public comments or complaints concerning the regulations were received. One of the purposes of amending these regulations was to clarify the requirements so that the Advisory Board could more easily interpret and implement the guidelines. The clarifications also make it easier for applicants, grantees, and the public to comprehend the regulations. The regulations do not overlap, duplicate or conflict with federal or state law or regulations. These regulations were subject to a regulatory action in August of 2012 but have not been comprehensively reviewed since September 2009. No technology, economic

conditions, or other factors have changed in the area affected by the regulations that would result in impact on small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comment was received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendment to the regulations will not have any negative impact on the institution of the family and family stability. The regulations to administer the CNI Trust Fund are essential to the integrity of this program and to protect the health and safety of Virginians. The CNI Trust Fund program is designed to promote medical research into traumatic brain and spinal cord injuries and to improve treatment and care through the provision of community-based services for Virginians who have sustained such injuries. Moneys in the CNI Trust Fund shall be used solely to support grants for Virginia-based organizations, institutions, and researchers for research on the mechanisms and treatment of neurotrauma as well as for community rehabilitative services. Virginians with brain injury or spinal cord injury and their families may benefit directly (if funds are awarded to a proposal for the establishment or expansion of an existing community-based brain injury program) or indirectly (if funds are awarded to research that will ultimately benefit a Virginian with brain injury or spinal cord injury and their family members).

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
60		The advisory board will solicit applications	Verb “will” changed to “shall” Adds a statement that requests for applications

			for grant moneys shall be issued at the discretion of the advisory board and shall depend upon availability of funds. This statement clarifies the conditions under which requests for applications will be made and informs the public that requests are not made on a regularly scheduled basis.
80		<p>Allows applications that state and demonstrate a clear intention to develop, expand, or improve community-based programs and services.</p> <p>States that no grant options are intended for long-term funding of research projects or programs.</p>	<p>Adds that an applicant can apply for grants to evaluate systems of services (i.e., community-based programs and supports) for people with traumatic brain injury or traumatic spinal cord injury. This allows applicants to apply for funding to conduct targeted evaluation of service systems or issues to determine the need for development, expansion, or improvement of services.</p> <p>Changes statement that no grants shall be used for long-term funding of research projects or community-based rehabilitative programs and services. This clarifies to applicants that grants are to be used to initiate research and programs but not to be used to maintain their long-term funding.</p>
90		<p>Present a convincing and persuasive discussion of how the proposed project will carry out its intention</p> <p>Describe efforts to ensure that the proposed project does not duplicate programs, services, or resources already available</p> <p>State and emphasize a commitment to collaborative community</p>	<p>Present a <u>clear and</u> convincing discussion of how the proposed project <u>shall</u> carry out its intention. Changes terms to those used more commonly in regulations.</p> <p>Adds statement that advisory board will <u>shall</u> accept applications that provide a plan for sustaining the proposed project following termination of a grant award as relevant to the intended purpose of the project. This requirement requires applicants to plan in advance for the ongoing funding of their projects. In addition, the requirement allows the advisory committee to award grants only to applicants that have a plan for funding in place to sustain their project following termination of their CNI grant.</p> <p>Describe efforts to ensure that the proposed project does not duplicate <u>existing</u> programs, services, or resources already available <u>to targeted individuals and communities</u></p> <p>Change clarifies that the statement refers to existing programs available to targeted individuals and communities.</p> <p><u>Demonstrate</u> a commitment to collaborative community planning involving consumer groups, service providers, employers, relevant state and</p>

		<p>planning involving consumer groups, service providers, employers, relevant state and local agencies, and other funding sources, as available or anticipated to become available.</p>	<p>local agencies, and other funding sources, as available <u>and appropriate</u>;</p> <p>Intent is to clarify the statement and make it more succinct.</p>
100			<p>The verbs "will" have been changed to "shall" in order to express a duty to act.</p>
110		<p>In the event of a substantial decline in moneys in the fund, the advisory board will attempt to distribute moneys to projects of an anticipated duration greater than one year in a manner as fair and equitable as possible.</p>	<p>The verbs "will" have been changed to "shall" in order to express a duty to act.</p> <p>In the event of a decline in moneys in the fund, the advisory board <u>shall</u> attempt to distribute moneys in a manner as fair and equitable as possible.</p> <p>Emphasizes that any decline in moneys in the fund shall result in the board distributing moneys to all projects (not just those with an anticipated duration greater than one year) in a manner as fair and equitable as possible.</p>

Enter any other statement here