

**Statement of Basis, Purpose, Substance and Issues for:
Proposed Regulations Titled
*Policies and Procedures for Administering the
Commonwealth Neurotrauma Initiative Trust Fund***

Basis.

Article 12 of Chapter 2 of Title 32.1 (Section 32.1-73.1 *et seq.*) of the Code of Virginia contains the law authorizing establishment of the Commonwealth Neurotrauma Initiative (CNI) Trust Fund, a special nonreverting fund, and the CNI Advisory Board, a permanent collegial body affiliated with the State Board of Health pursuant to Section 2.1-1.6 of the Code. Section 32.1-73.4 of the Code contains mandatory language authorizing the Board of Health to promulgate the proposed regulations.

That section provides that the Board of Health "shall promulgate regulations establishing procedures and policies for soliciting and receiving grant applications [for moneys in the CNI Trust Fund] and criteria for reviewing and ranking such applications. . . . The Board [of Health] shall receive the recommendations of the [CNI] Advisory Board prior to promulgating or revising any such regulations." (On August 25, 1999, the CNI Advisory Board voted to recommend to the Board of Health the policies and procedures embodied in the proposed regulations.)

Purpose.

Promulgation and adoption of the proposed regulations will help implement an unprecedented program in Virginia designed to promote medical research into traumatic brain and spinal cord injury and to provide treatment and care for Virginians who have sustained such injury. Subsection B of Section 32.1-73.2 provides that: (i) moneys in the CNI Trust Fund "shall be used solely to support grants for Virginia-based organizations, institutions, and researchers" and (ii) "fifty percent [of the moneys in the Fund] shall be allocated for research on the mechanisms and treatment of neurotrauma and fifty percent shall be allocated for rehabilitative services."

Moneys are deposited into the CNI Trust Fund pursuant to Subsection E of Section 18.2-271.1 of the Code. That section provides that a fee of 105 dollars shall be charged "for reinstatement of the driver's license of any person whose privilege or license has been suspended or revoked as a result of . . . [a specified traffic violation]." This section further provides that 25 dollars of this fee "shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund."

This funding mechanism depends on fees generated by the reinstatement of drivers' licenses after those drivers have been convicted of offenses that carry the potential for causing motor vehicle collisions and associated neurologically-traumatic injuries. The funding mechanism rests on a sense of fairness and responsibility: Those in our society whose behavior often causes neurotrauma to befall others through the negligent or reckless driving of motor vehicles bear the cost of providing research into understanding and treating neurotrauma and

services for victims. The existence of the CNI Trust Fund also may have the indirect benefit of liberating certain general funds of the Commonwealth for other services and purposes.

The Trust Fund presently has a balance of approximately \$580,000. These moneys may be distributed to support the research and services contemplated by the authorizing law only when the proposed regulations to administer the CNI Trust Fund become effective.

Substance.

In their entirety, the proposed regulations will implement an innovative program to support medical research on the mechanisms and treatment of neurotrauma and to support rehabilitative services. Such a program has never before existed in Virginia.

Article 1 of the proposed regulations (sections 10 through 60) contains provisions that define key terms and set forth general information relating to administration of the CNI Trust Fund. These provisions include a statement of the general policy underlying and purpose of the regulations. They also discuss (i) the applicability of the Administrative Process Act (Section 9-6.14:1 et seq. of the Code of Virginia) to decisions that will be made pursuant to the proposed regulations, and (ii) the applicability of the Virginia Freedom of Information Act (Section 2.1-340 et seq. of the Code of Virginia) to applications submitted for grants from the CNI Trust Fund.

Article 2 (sections 70 through 100) of the proposed regulations sets forth the procedures by which the CNI Advisory Board will solicit and review applications for grants of moneys from the CNI Trust Fund. This article clearly sets forth the priorities with which the CNI Advisory Board will review applications for moneys for both medical research and rehabilitative services.

Article 3 (sections 110 and 120) of the proposed regulations specifies the considerations and criteria by which the CNI Advisory Board will rank and review applications for moneys in the CNI Trust Fund, and explains how the CNI Advisory Board will select successful applications, determine the amount of awards, and announce these decisions.

Issues.

One possible disadvantage identified during discussions of the CNI Advisory Board involves the possibility that certain public and private entities that presently provide ongoing rehabilitative services to disabled persons may abandon or limit their efforts to continue seeking general state funding, through the legislative process, for their programs in the belief that obtaining grants from the CNI Trust Fund may present an easier mechanism for funding.

The process of awarding grants from the CNI Trust Fund will necessarily involve a competitive process in which successful candidates may or may not, depending on the merits of any successive applications they submit, receive more than an initial award. Each award will

cover a project designed to last one, two or three years. All entities that have received a grant from the CNI Trust Fund may seek an additional award to continue their projects or to engage in another worthy project, but their applications will be considered in the competitive process contemplated by the authorizing law and given form in the proposed regulations. Entities needing long-term funding for the rehabilitative services they provide should beware of the competitive nature of the manner by which the CNI Trust Fund will be administered and should consider carefully the advantages and disadvantages of any funding source available to them. No other disadvantages of the proposed regulations to the public, the agency or the Commonwealth have been identified.

The primary advantage of the proposed regulations to the public is the very creation of a heretofore nonexistent, specially-funded program that will support both important research on neurotrauma and needed services for Virginians who have sustained neurotrauma. By comparison, certain medical diseases and other medical conditions have long-established funding mechanisms and programs, both at the federal and state levels. Adoption of the proposed regulations will allow the CNI Trust Fund to fill a void, thereby serving the common good in an important new way.