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Fast-Track Regulation Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC30-50
VAC Chapter title(s)	Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund
Action title	Amend 22VAC30-50 Following Periodic Review
Date this document prepared	December 16, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action, which follows a Periodic Review, makes technical and clarifying changes to 22VAC30-50 (Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund). The changes align the chapter with the Code of Virginia and current practices, while reducing ambiguities.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CNI = Cognitive Neurotrauma Initiative
DARS = Department for Aging and Rehabilitative Services

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On December 16, 2020, the Commissioner of DARS approved the amendments to the Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund (22VAC30-50).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

This Fast Track regulatory action was initiated following a Periodic Review of the chapter.

Section 51.5-181 of the Code of Virginia stipulates “the Commissioner shall receive the recommendations of the [CNI Trust Fund] Advisory Board prior to promulgating or revising any such regulations.”

In accordance with the Code requirements, the department shared the potential regulatory revisions with the CNI Trust Fund Advisory Board (established pursuant to § 51.5-180 of the Code of Virginia) at an Advisory Board meeting on December 4, 2020. At the meeting, the CNI Trust Fund Advisory Board unanimously endorsed the changes proposed by the department through the Fast Track action.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The CNI Trust Fund is authorized under Article 12 of Chapter 14 of Title 51.5 of the Code of Virginia (§§ 51.5-178 et seq.). Specifically, under § 51.5-181 (Procedures for grant applications), “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.”

In addition, § 51.5-131 of the Code of Virginia authorizes the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by DARS.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The CNI Trust Fund is a special non-reverting fund established in the Code of Virginia (§§ 51.5-178 et seq.) that provides funding to Virginia-based organizations, institutions and researchers to address the needs of people with acquired neurotrauma. Neurotrauma is defined as “injury to the central nervous system (i.e., a traumatic spinal cord or brain injury) that results in loss of physical functions, cognitive functions, or both” (22VAC30-50-10). The source of revenue for the CNI Trust Fund is a portion of the reinstatement fees that are charged before restoring an operator's license to any person whose driver's license has been revoked or suspended upon conviction for specified dangerous driving offenses. In accordance with the Code of Virginia and 22VAC30-50, the CNI Trust Fund Program provides funding for projects that are either: 1) Research-Based; or 2) Community-Based Rehabilitative Programs and Services.

As outlined in 22VAC30-50-30 (Disbursement of funds), the regulatory chapter establishes: (i) policies and procedures for soliciting and receiving applications for grants from the fund, (ii) criteria for reviewing and ranking such applications, and (iii) procedures for distributing moneys in the fund. The chapter requirements ensure fidelity to the purpose of the CNI Trust Fund and proper use of public funds to improve the lives of individuals who have acquired neurotrauma.

Upon review of the chapter during the Periodic Review, DARS identified several areas that could benefit from minor revisions. The changes align the chapter with the Code of Virginia and current practices, and reduce potential ambiguities. At a December 4, 2020 meeting, the CNI Trust Fund Advisory Board unanimously endorsed the changes proposed by the department through the Fast Track action.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The following changes are being made to this chapter:

- In Section 40 (Compliance with the Administrative Process Act), strike “case decisions” reference language. This does not apply to the CNI Trust Fund Program. DARS and the CNI Trust Fund Advisory Board do not make case decisions related to 22VAC30-50.
- In Section 50 (Application of exemption to the Virginia Freedom of Information Act), change the subdivision reference from “12” to “9.” The reference relates to the Freedom of Information Act exclusions in § 2.2-3705.5 of the Code of Virginia. The current reference to subdivision “12” is incorrect. The subdivision reference should be “9.”
- In Section 60 (Requests for proposals), the section is rephrased to improve clarity, and to better align with practice and the requirements in 22VAC30-50-120.
- In Section 70 (Grant reviewers and technical advisors), strike the word “three” in relation to the reference to Virginia medical schools. This figure is outdated.
- In Section 120 (Unexpended funds), the section is rephrased to improve clarity, and to better align with practice and the requirements in 22VAC30-50-60.

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of the revisions are to clarify language that is ambiguous. The changes also align the chapter with the Code of Virginia and current practices. The regulatory action poses no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no federal requirements for the CNI Trust Fund Program. It is a state-established program operated in accordance with Virginia law and with Virginia funding.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The CNI Trust Fund Program currently funds 11 ongoing projects. Seven projects are based in Virginia higher education institutions, which may include Virginia's public universities. However, there are no projected costs or impacts on the work of the funded organizations or institutions who seek CNI Trust Fund Program support.

Localities Particularly Affected

No locality is disproportionately affected by the revisions.

Other Entities Particularly Affected

No entity is disproportionately affected by the revisions.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>DARS would experience minimal to no impact from these revisions to the regulation. There are no expected impacts or changes that require funding to execute.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no expected cost for any other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The revisions clarify language that is ambiguous. The changes also align the chapter with the Code of Virginia and current practices.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There is no expected cost or impact for localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The revisions clarify language that is ambiguous. The changes also align the chapter with the Code of Virginia and current practices.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The CNI Trust Fund Program provides funding to Virginia-based organizations, institutions and researchers. The Program funds projects that are: 1) Research Projects; or 2) Community-Based Rehabilitative Programs and Services. Virginia-based organizations and institutions of higher education that seek funding from the CNI Trust Fund Program are likely to be impacted directly. Individuals in Virginia who have acquired neurotrauma and either participate in or benefit from the funded projects as well as their caregivers are also indirectly impacted.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The CNI Trust Fund Program currently funds 11 ongoing projects. Seven projects are based in Virginia higher education institutions. Four projects are based in community organizations or private research entities, all of which are likely small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p>	<p>There are no projected costs for individuals, businesses or entities resulting from these revisions. There will be no impact on the work of the funded organizations or institutions.</p>

<p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	
<p>Benefits the regulatory change is designed to produce.</p>	<p>The chapter requirements ensure fidelity to the purpose of the CNI Trust Fund and proper use of public funds to improve the lives of individuals who have acquired neurotrauma.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

No alternative action was considered because the Code of Virginia gives the DARS Commissioner oversight and responsibility for these regulations. Amending the regulation is the least burdensome method to accomplish this purpose. In some instances, such revisions are precipitated by Code of Virginia requirements.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

No alternatives to the regulatory action were considered as § 51.5-181 (Procedures for grant applications), requires the Commissioner to “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 regulatory action does not change recordkeeping or reporting requirements for small businesses.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Department for Aging and Rehabilitative Services (DARS) is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Charlotte Arbogast, 8004 Franklin Farms Drive, Henrico, VA 23228, phone: 804-662-7093, fax: 804-662-7663, charlotte.arbogast@dars.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
40		Compliance with the Administrative Process Act	Strike "case decisions" reference language. This does not apply to the CNI Trust Fund Program. DARS and the CNI Trust Fund Advisory Board do not make case decisions for the implementation of 22VAC30-50.

50		Application of exemption to the Virginia Freedom of Information Act	Change the subdivision reference from “12” to “9.” The reference relates to the Freedom of Information Act (FOIA) exclusions in § 2.2-3705.5 of the Code of Virginia. The current reference to subdivision “12” is incorrect. The subdivision reference should be “9.”
60		Requests for proposals	This section is rephrased to improve clarity and to better align with practice and the requirements in 22VAC30-50-120.
70		Grant reviewers and technical advisors	Strike the word “three” in relation to the reference to Virginia medical schools. This figure is outdated.
120		Unexpended funds	This section is rephrased to improve clarity and to better align with practice and the requirements in 22VAC30-50-60.