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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-41
Regulation title(s)	Neighborhood Assistance Tax Credit Program
Action title	Amend the NAP Regulation to comply with the Code of Virginia
Date this document prepared	June 18, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The State Board of Social Services proposes to amend the NAP regulation to: 1) allow physician specialists to be eligible for tax credits when donating specialty medical services to patients who are referred from an approved organization; 2) provide that an individual or business making a qualified donation may accept a tax credit of less than the 65 percent of the donated value; 3) establish that actions of the Department of Social Services shall be exempt from the provisions of the Administrative Process Act; 4) add a definition for an "affiliate"; and 5) add a definition for "poverty guidelines."

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.

Neighborhood Assistance Program (NAP)

Statement of final agency action

Please 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.

The State Board of Social Services took final action on 22VAC40-41, Neighborhood Assistance Tax Credit Program, on June 18, 2015.

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.

House Bill 1459 (Chapter 153 of the 2015 Acts of Assembly), House Bill 1701 (Chapter 56 of the 2015 Acts of Assembly), and Senate Bill 1325 (Chapter 815 of the 2009 Acts of Assembly) require the State Board of Social Services to adopt regulations for the administration of the Neighborhood Assistance Program in accordance with Virginia Code § 58.1-439.20.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed changes are necessary to conform the NAP regulation to legislation passed by the General Assembly. The changes allow NAP organizations more flexibility to attract donations to improve and protect the health and well-being of the Commonwealth’s most vulnerable citizens. The changes will allow NAP organizations to fully utilize assigned tax credits which have not always been fully used in the past. The changes expand the opportunities to attract and maximize the use of physician specialists for medically fragile patients. The changes also help to clarify NAP definitions to provide more consistent program interpretation for staff and the public.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

There is no indication that any of the proposed changes will be controversial. Proposed changes will provide increased flexibility for NAP organizations. NAP organizations will be able to provide NAP credits to physician specialists who need to meet off-site with fragile patients. NAP organizations will have the ability to develop individualized donor valuation agreements with individuals and businesses. Additional definitions will help assist with the administration of the Neighborhood Assistance Program.

Substance

Please 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 proposed changes are as follows:

- Makes physician specialists eligible for tax credits when donating specialty medical services to patients who are referred from an approved organization (Chapter 153 of the 2015 Acts of Assembly).
- Provides that an individual or business making a qualified donation may accept a tax credit of less than 65 percent of the donated value from an approved neighborhood organization ((Chapter 56 of the 2015 Acts of Assembly).
- Related to Senate Bill 1325 (Chapter 815 of the 2009 Acts of Assembly):
 - Establishes actions of the Department of Social Services relating to the review of the neighborhood organization proposals and provides that the allocation of tax credits will be exempt from the provisions of the Administrative Process Act. Decisions of the Department of Social Services will be final and not subject to review or appeal.
 - Adds a definition for an “affiliate” and “poverty guidelines.”

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 there are no disadvantages to the public or the Commonwealth, please indicate.

These changes pose no disadvantages to the public, the Commonwealth, and/or government officials, or the regulated community. Advantages to the changes include: 1) increased flexibility for NAP organizations; 2) ability to have physician specialists meet off-site with fragile patients; 3) development of individualized donor valuation agreements by NAP organizations; and 4) clarifying definitions which will assist with the administration of the Neighborhood Assistance Program.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 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.

No locality will be particularly affected.

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.

No alternative regulatory methods were identified, as the changes are specifically required by statute.

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.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	There is no cost to the state.
Projected cost of the new regulations or changes to existing regulations on localities.	There is no projected cost to localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	All individuals, businesses and trusts making a qualified donation to an approved NAP organization.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity,	There are 257 non-profit 501.c.3 organizations participating in the Neighborhood Assistance Program. These do not meet the definition of "small business" since they are not independently

<p>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>owned nor do they have gross annual sales. There are 342 businesses that donated to NAP organizations and received tax credits. NAP does not collect data as to which of the businesses meet the stated definition of "small business."</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no projected additional costs.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>More donations to approved NAP organizations.</p>

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.

There are no less burdensome or intrusive alternatives. The proposed changes conform the regulation to the Code of Virginia.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include 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 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.

This is not a result of periodic review.

Family impact

Please assess the impact of this 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 regulation has no direct impact on families and family stability. It impacts NAP approved non-profit organizations and their donors. Services provided by these nonprofit organizations have a positive impact on the institution of the family and family stability.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Regulation contains no definition of “affiliate.”	A definition for “affiliate” is added to eliminate any potential misinterpretation of the word “affiliate.” The impact will be clear and consistent interpretation of the word “affiliate.”
10		Regulation contains no definition of “poverty guidelines.”	A definition for “poverty guidelines” is added to eliminate any potential misinterpretation of the word “poverty guidelines.” The impact will be clear and consistent interpretation of the word “poverty guidelines. It also references the poverty guidelines provided in the Federal Register by the U.S. Department of Health and Human Services.
20		Organizations that disagree	The language in the regulation referring to

		with the application disposition or termination as an approved organization can appeal to the Commissioner.	an appeal to the Commissioner for reconsideration is removed to conform with § 58.1-439.20 E of the Code. The intent of the regulation is to facilitate timely disposition of tax credits to approved NAP organizations.
50		Physician specialists are not able to serve patients outside of participating clinics or federally qualified health centers and receive tax credits.	Physician specialists are eligible for tax credits when donating specialty medical services to patients who are referred from an approved organization whose sole purpose is providing specialty medical referral services to patients of participating clinics or federally qualified health centers regardless of where the specialty medical services are delivered. The rationale is to increase the free specialty care for medically fragile citizens for improved healthcare.
50		All business donors receive 65% of donation value in tax credits.	Organizations can determine the percentage of donation value up to 65% with the written agreement of the donor. The impact will result in greater flexibility of nonprofit organizations to solicit donations from businesses. The impact will result in the nonprofit organization better utilizing tax credits and thus improved services for citizens.
55		All individual donors receive 65% of donation value in tax credits.	Organizations can determine the percentage of donation value up to 65% with the written agreement of the donor. The impact will result in greater flexibility of nonprofit organizations to solicit donations from individuals. The impact will result in the nonprofit organization better utilizing tax credits and thus improved services for citizens