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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12VAC5-520
<b>VAC Chapter title(s)</b>	Regulations Governing the Dental Scholarship and Loan Repayment Programs
<b>Action title</b>	Amend Regulation Following Periodic Review
<b>Date this document prepared</b>	November 15, 2018

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.*

In June of 2016, the Virginia Department of Health (VDH) conducted a periodic review of 12VAC5-520, Regulations Governing the Dental Scholarship and Loan Repayment Programs. As a result of the review, VDH determined it was necessary to use the regulatory process to amend these regulations. It is necessary to amend these regulations, as the regulatory chapter has not been comprehensively revised in over a decade. Further, this regulatory action is necessary to amend the regulations to conform to similar regulatory chapters. There are several scholarship and loan repayment programs administered by VDH and 12VAC5-520 as currently written does not resemble those other programs. The proposed amendments will make the regulatory chapter consistent with similar programs. The proposed amendments include corrections to the definitions of terms utilized within the regulatory chapter; changes to make the regulatory chapter easier to read; formatting changes to make the regulatory chapter conform to other similar programs; and correcting or inserting language regarding how to apply to the program and the penalty to be paid in the event a recipient defaults after graduation.

## 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.*

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CFR- Code of Federal Regulations  
USC – United States Code  
VDH- Virginia Department of Health

## 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.”*

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The mandate for this regulatory change is a periodic review.

## 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.*

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The regulation is promulgated under the authority of §§ 32.1-12, 32.1-122.9 and 32.1-122.9:1 of Chapter 4 of Title 32.1 of the Code of Virginia (Code). Section 32.1-12 grants the Board of Health the legal authority “to make, adopt, promulgate, and enforce such regulations necessary to carry out the provisions of Title 32.1 of the Code.” Section 32.1-122.9 of the Code directs the Board of Health to establish an annual dental scholarship for students in good standing at Virginia Commonwealth University. Section 32.1-122.9 of the Code also directs the Board of Health to promulgate regulations to administer the scholarship program. Section 32.1-122.9:1 of the Code directs the Board of Health to establish a dental loan repayment program for graduates of accredited dental schools who meet criteria determined by the Board. The prior Executive Order 17 (2014) and current Executive Order 14 (2018) require that every existing state regulation be reviewed at least once every four years by the promulgating agency. Pursuant to Executive Order 17, VDH conducted a periodic review of 12VAC5-520 in June of 2016. This regulatory action is necessary in order for the regulatory chapter to comply with the general principles of Executive Order 17 and Executive Order 14, which require that regulations be clearly written and easily understandable and that the regulations be designed to achieve their intended objective in the most efficient, and cost effective manner.

## 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.*

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In June of 2016, VDH conducted a periodic review of 12VAC5-520, "Regulations Governing the Dental Scholarship and Loan Repayment Programs." As a result of the review, VDH determined it was necessary to use the regulatory process to amend these regulations, as the regulatory chapter has not been comprehensively revised in over a decade. Further, this regulatory action is necessary to amend the regulations to conform to similar regulatory chapters. There are several scholarship and loan repayment programs administered by VDH and 12VAC5-520, as currently written, does not resemble those other programs. The regulatory action is essential to protect the health, safety and welfare of citizens as 12VAC5-520 is currently out of date and is not consistent with other similar programs. This proposed regulatory action shall update the regulatory chapter and encourage the use of the scholarship and loan repayment programs, potentially leading to more dentists practicing within underserved areas within the Commonwealth of Virginia.

## 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.*

Definitions: Add the definitions of "Dental student", "Department" and "Recipient"; remove the definition of and "Scholarship recipient"; update the definitions of "Dental practice", "Dental underserved area", "Designated state facility", "Full-time dental practice", "Loan repayment award", "Restitution" and "Scholarship award"; and simplify the definition of "Interest."

Administration of program: Repeal an unnecessary section.

Population and dentist data: Update the CFR reference to proper section.

Eligibility for scholarships and repayment awards: Rename the section. Update the format of the section so that it resembles other similar regulatory chapters.

Scholarship and loan repayment award: Repeal an unnecessary section.

Number of applications per student, amount of scholarships, and selection criteria: Rename the section. Minor technical amendments.

How to apply: Addition of a new section that is present in similar regulatory programs.

Conditions of scholarships and contractual practice obligation: Rename the section. Update the format of the section to resemble other similar regulatory chapters. Technical amendments. Specify that obligated service must begin within 180 days of graduation rather than 90 days so that the timeframe is identical to other similar regulatory chapters. Add the requirement that recipients may only take a total of four weeks of leave for personal reasons without written permission from the commissioner. This is a requirement that is present in other similar regulatory chapters. Movement of information regarding repayment to a new section.

Special requests for approval: Minor technical amendments.

Breach of contract: Rename the section and update the format of the section so that it resembles other similar regulatory chapters.

Deferment and waivers: Addition of new section, which consists of some language from the previous "Default" section (now "Breach of contract" section). Update the format of the section so that it resembles other similar regulatory chapters.

Repayment: Minor technical amendments. Addition of the requirement that a scholarship recipient shall pay a penalty in the event of default after graduation.

Fulfillment after default payments: Addition of a new section.

Reporting requirements: Minor technical amendments. Update the format of the section so that it resembles other similar regulatory chapters.

General language and wording changes were also made for consistency and clarity.

### 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.*

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The primary advantage of the proposed regulatory action to the public is a potential increase in the availability of dentists in underserved areas, should this program be funded. Additionally, these underserved areas will be better positioned to retain qualified dentists due to the obligation created by accepting the scholarship or loan repayment funds. VDH does not foresee any disadvantages to the public, the agency or the Commonwealth associated with the proposed regulatory action.

### 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.*

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There are no applicable federal requirements.

### 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.*

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Other State Agencies Particularly Affected

No other state agencies will be particularly affected by the proposed regulation.

Localities Particularly Affected

No locality will be particularly affected by the proposed regulation.

Other Entities Particularly Affected

No other entity will be particularly affected by the proposed regulation.

**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>The projected impact to the Virginia Department of Health resulting from this regulatory action is negligible. This program is not currently funded.</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>The projected impact to other state agencies resulting from this regulatory action is negligible.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefit of the regulatory amendment is that the regulatory chapter will conform to other similar regulatory programs and conform to the general principles of Executive Order 17 (2014) and Executive Order 14 (2018).</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The projected impact to the Virginia Department of Health resulting from this regulatory action is negligible. This program is not currently funded.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit of the regulatory amendment is that the regulatory chapter will conform to other similar regulatory programs and conform to the general principles of Executive Order 17 (2014) and Executive Order 14 (2018).</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>Dentists and dental students desiring to work in dental underserved areas; patients and facilities within dental underserved areas within the Commonwealth.</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</p>	<p>Should the program become funded, there are approximately nine dental practices across the Commonwealth in dental underserved areas that</p>

<p>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>would be affected and all nine are 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:  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>None</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit of the regulatory amendment is that the regulatory chapter will conform to other similar regulatory programs and conform to the general principles of Executive Order 17 (2014) and Executive Order 14 (2018).</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.*

Section 32.1-122.9 of the Code directs the Board of Health to establish an annual dental scholarship for students in good standing at the Virginia Commonwealth University. Section 32.1-122.9 of the Code also directs the Board of Health to promulgate regulations to administer the scholarship program. Section 32.1-122.9:1 of the Code directs the Board of Health to establish a dentist loan repayment program for graduates of accredited dental schools who meet criteria determined by the Board. Executive Order 17 (2014) and Executive Order 14 (2018) require that every existing state regulation be reviewed at least once every four years by the promulgating agency. Pursuant to the orders, VDH conducted a periodic review of 12VAC5-520 in June 2016. This regulatory action is necessary in order for the regulatory chapter to be in compliance with the general principles of Executive Order 17 and Executive Order 14, which require that regulations be clearly written and easily understandable and that regulations shall be designed to achieve their intended objective in the most efficient and cost effective manner. The regulations are mandated by law; the review of the regulations is mandated by law; and there are no viable alternatives to the proposed regulatory action to achieve the necessary regulatory changes as determined by the regulatory review.

**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.*

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The alternative regulatory methods are not applicable. The regulations are mandated by law; the review of the regulations is mandated by law; and there are no viable alternatives to the proposed regulatory action to achieve the necessary regulatory changes as determined by the regulatory review.

### **Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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The regulatory change meets the criteria set out in Executive Order 14 and is necessary for the protection of public health, safety, and welfare as the amendments result in updated regulations that are consistent with other similar programs. The regulatory change has no impact on small businesses and is clearly written and easily understandable. There is continued need for the regulation, should the program be funded in the future, to encourage the use of the scholarship and loan repayment programs, potentially leading to more dentists practicing within underserved areas within the Commonwealth of Virginia. No comments or complaints regarding the proposed regulation were received from the public. The regulation does not overlap, duplicate or conflict with federal or state law or regulation. The regulation was last amended effective November 2012.

### **Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

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No public comments were received during the public comment period following the publication of the Notice of Intended Regulatory Action.

## 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.*

The Virginia Department of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of 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 Robin Buskey, 109 Governor Street, Richmond, VA 23219, 804-864-7253, robin.buskey@vdh.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

## 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 section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
10		This section provides definitions for technical terms utilized throughout the regulatory chapter.	Updating the definition of “Dental practice”, “Dental underserved area”, “Designated state facility” “Full-time dental practice”, “Loan repayment award”, “Restitution” and “Scholarship award”; updating and simplifying the definition of “Interest”; adding a definition of the terms “Dental student”, “Department” and “Recipient”; and removing the definition of and “Scholarship recipient”.  Impact: Greater clarity of the regulations
20		This section states that the State Health Commissioner	Repealing this unnecessary section.  Impact: Less burdensome regulations.



		shall administer the regulatory chapter.	
80		This section explains how dental underserved areas are calculated.	Updating the CFR reference within the regulations. The previous citation referenced the incorrect section.  Impact: Greater clarity of the regulations
130		This section lays out the requirements for an individual to be an eligible applicant of the dental scholarship program and the dental loan repayment program.	Renaming the section to “Eligibility for scholarships and loan repayment awards.” Clarifying the maximum number of scholarship and loan repayment awards. Updating the format of the section to resemble other similar regulatory chapters.  Impact: Greater clarity of the regulations; Less burdensome regulations as similar regulatory chapters shall be governed the same.
140		This section states that any individual awarded a scholarship or loan repayment shall enter into a contract with the commissioner	Repealing this unnecessary section.  Impact: Less burdensome regulations.
150		This section discusses the establishment of the appropriation for the program along with how the awards shall be distributed	Renaming the section to “Scholarships and loan repayment awards details and selection criteria.” Minor technical amendments.  Impact: Greater clarity of the regulations
	155	This section discusses how applicants to the scholarship and loan repayment programs may apply.	Inserting a new section. This section occurs in other similar regulatory chapters.  Impact: Greater clarity of the regulations
160		This section provides the requirements of the contract that a scholarship or loan repayment recipient must enter into with the commissioner	Renaming the section to “Conditions of scholarships, loan repayment awards and contractual practice obligation.” Updating the formatting of the section to resemble other similar regulatory chapters. Specifying that obligated service must begin within 180 days of graduation rather than 90 days so that the timeframe is identical to other similar regulatory chapters. Adding the requirement that recipients may only take a total of four weeks of leave for personal reasons without written permission from the commissioner. This is a requirement that is present in other similar regulatory chapters. Moving information regarding repayment to a new section. Minor technical amendments.

			Impact: Greater clarity of the regulations; Less burdensome regulations as similar regulatory chapters shall be governed the same.
170		This section lays out the requirements for a recipient to practice in an area that does not qualify as a dental underserved area.	Minor technical amendment.  Impact: Greater clarity of the regulations
190		This section describes circumstances under which a recipient will be considered to be in breach of contract and will be required to forfeit the monetary award and repay the money to the Commonwealth of Virginia	Renaming the section to “Breach of contract.” Formatting the section to resemble other similar regulatory programs. Separating the section into what constitutes a breach for scholarship recipients and what constitutes a breach for loan repayment award recipients. Removing certain language that shall be moved to a new section.  Impact: Greater clarity of the regulations. Ease of reading for members of the public.
	195		Inserting a new section that relates to when a scholarship or loan repayment recipient may receive a deferment, waiver or variance of obligation.  Impact: More comprehensive regulations; greater clarity of the regulations; ease of reading the regulations for members of the public.
200		This section lays out the terms of repayment once a recipient defaults.	Adding the requirement that a scholarship recipient shall pay a penalty in the event of default after graduation. The penalty shall be two times the award amount. This is the same requirement as other similar regulatory chapters. Minor technical amendments.  Impact: More comprehensive regulations
	205	This section presents what occurs if a participant or recipient fulfills their obligation after a breach of contract.	Inserting a new section that describes fulfillment of service obligation following a breach of contract.  Impact: More comprehensive regulations
210		This section lays out the reporting requirements of the Virginia Commonwealth University School of Dentistry regarding those students who receive the scholarship. The section also lays out the reporting requirements of scholarship and loan repayment recipients.	Formatting changes to make the section resemble similar sections in other similar regulatory chapters. Minor technical changes.  Impact: Greater clarity of the regulations. Less burdensome regulations as similar regulatory chapters shall be governed the same.