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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Pharmacy, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC110-21
<b>VAC Chapter title(s)</b>	Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians
<b>Action title</b>	2022 Pharmacists initiating treatment
<b>Date this document prepared</b>	June 13, 2023; uploaded again April 2, 2024 due to technical problems. No changes.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

Chapters [790](#) and [791](#) of the 2022 Acts of Assembly expanded the conditions for which pharmacists can initiate treatment. The legislation additionally required that the Board of Pharmacy promulgate emergency regulations to be effective within 280 days of enactment. These emergency regulations amend existing emergency regulations promulgated pursuant to 2020 and 2021 legislation regarding pharmacists initiating treatment.

### 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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CDC = Centers for Disease Control and Prevention

HIPAA = Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d *et seq.*

### 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 the ORM procedures, “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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Chapters [790](#) and [791](#) of the 2022 Acts of Assembly required the Board to promulgate regulations to implement the provisions of the legislation in enactment clause 2.

### 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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Regulations of the Board of Pharmacy are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be “[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 *et seq.*) that are reasonable and necessary to administer effectively the regulatory system.”

Virginia Code § 54.1-3303.1 sets forth the ability for pharmacists to initiate treatment for certain diseases and conditions “in accordance with a statewide protocol developed by the Board in collaboration with the Board of Medicine and the Department of Health and set forth in regulations of the Board.”

### 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 is intended to solve.*

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The purpose of the proposed regulations is to ensure that a pharmacist who initiates treatment for patients follows protocols that would render such treatment to be a low risk for patient harm. The rules establishing treatment protocols, appropriate notification of primary care providers, obtaining patient histories, and providing appropriate counseling of patients are necessary to ensure the health and safety of patients who receive treatment from pharmacists.

### 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 substantive changes to the existing emergency regulations are a requirement in 18VAC110-21-46(A) to require the pharmacist to have a bona fide pharmacist-patient relationship with the patient the pharmacist initiates treatment with. In addition, nicotine replacement therapy and other tobacco-cessation therapies are added as drugs and therapies with which a pharmacist can initiate treatment for an adult 18 years of age or older. Subsection B is added to Section 46, which allows a pharmacist to initiate treatment for patients three years of age and older by administering vaccines included on the Immunization Schedule published by the CDC, vaccines for COVID-19, and tests for COVID-19 and other coronaviruses. Additionally, the amendments ensure that practitioners will be provided notification of initiation of treatment with a patient even if no method exists to send the notification electronically in a manner compliant with HIPAA. Finally, the amendments require the treating pharmacist to obtain a patient history and, in the case of administration of vaccines to a minor, provide the minor's parent or guardian that the minor should visit a pediatrician annually.

### 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.*

- 1) The primary advantages to the public are access to healthcare for certain diseases and conditions at more locations, including patients' local pharmacy. There are no disadvantages to the public.
- 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system . . . Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title." The promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

### 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 applicable federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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 – none

Localities Particularly Affected – none

Other Entities Particularly Affected – none

### Economic Impact

*Consistent with § 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 the proposed change versus the status quo.*

#### Impact on State Agencies

<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.	There are no expected costs, savings, fees, or revenues to the agency from this regulatory change.
<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.	There are no expected costs, savings, fees, or revenues to other state agencies from this regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no intended benefits to agencies.

#### Impact on Localities

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no expected costs, savings, fees or revenues to localities from this regulatory change.
Benefits the regulatory change is designed to produce.	There are no expected benefits to localities from this regulatory change.

#### Impact on Other Entities

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

<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>Individuals affected will be pharmacists, predominantly those practicing in community pharmacies or clinic settings, who are authorized to initiate treatment for patients.</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>As of June 20, 2023, there were 1,756 pharmacies in the Commonwealth. As of March 31, 2023, there were 16,064 licensed pharmacists in the Commonwealth (8,760 with a Virginia address of record). The agency has no estimate or number for community pharmacies or pharmacists working in community pharmacies or medical clinics.</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>There are no projected costs for affected individuals.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The amendments will offer practitioners broader authority to administer drugs and devices and offer the public more options for safe treatment.</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.*

The General Assembly issued a mandate to the Board to promulgate regulations to permit pharmacists to initiate treatment as provided in the 2022 legislation to be effective within 280 days of enactment. There is no alternative to regulation.

**Regulatory Flexibility Analysis**

*Consistent with § 2.2-4007.1 B 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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There were no alternative regulatory methods the Board could consider because the Board was directed to implement the legislation through regulations, and the Board cannot change requirements for small businesses because it has no jurisdiction to do so. 1) There are no compliance or reporting requirements; 2) there are no schedules or deadlines for reporting requirements because there are no reporting requirements; 3) there are no compliance or reporting requirements to simplify or consolidate; 4) there are no performance standards; 5) the Board has no jurisdiction to exempt small businesses from the regulations.

**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 EO 19 and the ORM procedures, 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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Not applicable.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s 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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The Board received no public comment.

**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 Board of Pharmacy 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 the 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://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov) or by fax to (804) 915-0382. 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 be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### 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 the existing VAC Chapter(s) and the proposed regulation. If the 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	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
21-46	Current emergency regulation addresses ability of pharmacists to initiate treatment based on 2020 and 2021 legislation.	<p>The first change to Subsection A requires the pharmacist to have a bona fide pharmacist-patient relationship with the patient the pharmacist is initiating treatment with.</p> <p>A 10 is added to permit pharmacists to initiate treatment for patients 18 and over with nicotine replacement and other tobacco-cessation therapies.</p> <p>Subsection B is added to allow pharmacists to initiate treatment for patients aged 3 and older by administering vaccines included on the Immunization Schedule published by the CDC, vaccines for</p>



		<p>COVID-19, and tests for COVID-19 and other coronaviruses.</p> <p>Subsection C 2 is amended to ensure that notifications will be sent from a treating pharmacist to a patient’s primary care provider without a requirement that the primary care provider be equipped to receive the information electronically in a manner that is compliant with HIPAA.</p> <p>Subsection C 5 is added to require a pharmacist initiating treatment to obtain a patient history, including questioning the patient for any known allergies, adverse reactions, contraindications, or health diagnoses or conditions that would be adverse to the initiation of treatment, dispensing, or administration.</p> <p>Subsection C 6 is added to require a pharmacist administering a vaccine or vaccines to a minor to provide a written notice to the minor’s parent or guardian that the minor should visit a pediatrician annually.</p> <p>Subsection D is added to permit the services described in 18VAC110-21-46 to be provided via telemedicine in compliance with requirements of § 54.1-3303 and consistent with the standard of care.</p> <p>The additions will improve timely access to care for patients who can receive vaccinations, tests, and certain controlled substances without the time and expense of traveling to a doctor or nurse practitioner for an office visit or an emergency department after normal office hours.</p> <p>The rationale for these amendments to the emergency regulations is to mirror the statutory language enacted by the legislature in Chapters <a href="#">790</a> and <a href="#">791</a> of the 2022 Acts of Assembly.</p>
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