

JOHN A. LAWRENCE
STATE REPRESENTATIVE
13TH LEGISLATIVE DISTRICT



HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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HARRISBURG OFFICE
P.O. BOX 1013
HARRISBURG, PA 17103
Independent Regulatory
Review Commission
(717) 260-6117

JENNERVILLE OFFICE
1 COMMERCE BLVD., SUITE 200
WEST GROVE, PA 19390
(610) 869-1602

Pennsylvania Independent Regulatory Review Commission
Chairperson George D. Bedwick
Vice Chairperson John F. Mizner, Esq.
Commissioner John J. Soroko, Esq.
Commissioner Murray Ufberg, Esq.
Commissioner Dennis A. Watson, Esq.
555 Walnut Street, Suite 804
Harrisburg, PA 17101

Via Electronic Mail to irrc@irrc.state.pa.us

Via Electronic Mail to RA-DHCHAPTER27PROPREG@pa.gov

September 21, 2026

**Re: Representative John Lawrence Comments on Proposed Rulemaking #10-242:
Communicable and Noncommunicable Diseases (IRRC #3490)**

Dear Commissioners,

The Pennsylvania Department of Health (Department) proposes significant revisions to existing regulations at 28 Pa. Code Chapter 27 (concerning communicable and noncommunicable diseases.) These changes extend significantly beyond the statutory authority granted to the Department and fail to heed the lessons learned during the COVID pandemic. As a result, the Department should withdraw the proposed regulation. If it does not, IRRC must reject it.

EXECUTIVE SUMMARY

- The Department has limited statutory authority to promulgate any regulation regarding a "condition," and no statutory authority to promulgate the proposed regulation regarding "conditions."

- The legislative intent of the Disease Prevention and Control Law focuses on communicable diseases. There is nothing to indicate the legislature sought to grant the Department authority to broadly regulate “conditions.”
- The Department proposes a sweeping definition of a “condition” that would provide the Department with expansive regulatory authority over nearly every facet of the human experience.
- The regulation proposed by the Department would provide the Department with authority to track individual’s use of an almost endless list of “products” in an electronic surveillance system maintained by the Department. Under the proposed regulation, such products could include firearms, cigarettes, alcohol, seat belts, light bulbs, and many other items.
- The Department’s proposed regulation regarding the tracking of “close contacts” is poorly drafted and leaves the door open for the Department to claim authority to track “close contacts” of noninfectious conditions.
- Previous actions taken under the guise of authority supposedly granted by the Disease Prevention and Control Law, particularly during the Wolf Administration, led to widespread public concern. The proposed regulation does nothing to assuage concerns regarding future abuses – in fact, the proposed regulation substantially expands executive branch authority.
- As a result of these and other concerns expressed by individuals and organizations across the political spectrum, the Department should withdraw the proposed regulation.

ANALYSIS

SECTION I. CONDITIONS

1. DESPITE AN ABSENCE OF STATUTORY AUTHORITY TO BROADLY REGULATE A “CONDITION,” THE DEPARTMENT CLAIMS SWEEPING NEW POWER TO REGULATE “CONDITIONS” SPANNING NEARLY EVERY FACET OF THE HUMAN EXPERIENCE

In a June 4, 2026 letter to IRRC, Pennsylvania Department of Health Secretary Dr. Debra Bogen plainly states the Department’s intent regarding this proposed regulation:

“The Department proposes to amend 28 Pa. Code Chapter 27 (relating to communicable and noncommunicable diseases)...to expand the list of reportable diseases, infections and conditions, to address changing standards and recommendations from experts,...and to

ensure the overall public health and safety by reducing the risk and spread of diseases, infections and conditions."¹ (emphasis added)

Note that the Department proposes to "expand the list of...conditions" and also proposes to "reduc[e] the risk and spread of...conditions."

The Department's belief that it possesses broad authority to regulate "conditions" has no basis in law and finds no support in an analysis of legislative intent during the passage of the Disease Prevention and Control Law. Despite the very limited nature of statutory authority granted to the Department concerning a "condition," the Department inserted the term throughout existing Chapter 27 regulations. The Department now proposes a new, incredibly expansive definition of the term "condition" that dramatically and substantially increases the scope of the Department's regulatory authority far beyond what is statutorily authorized.

2. NONE OF THE STATUTES CITED AS A BASIS FOR THE PROPOSED REGULATION PROVIDE THE DEPARTMENT WITH BROAD AUTHORITY TO REGULATE A "CONDITION"

As outlined in Section 8 of the Regulatory Analysis Form, the Department cites a dozen separate statutory provisions as a basis for the proposed regulation:

- Section 16(a) of the Disease and Prevention Control Law of 1955 (35 P.S. § 521.16(a))
- Section 16(b) of the Disease and Prevention Control Law of 1955 (35 P.S. § 521.16(b))
- Section 2102(a) of the Administrative Code of 1929 (71 P.S. § 532(a))
- Section 2111(b) of the Administrative Code of 1929 (71 P.S. § 541(b))
- Section 2106(a) of the Administrative Code of 1929 (71 P.S. § 536(a))
- Section 2106(b) of the Administrative Code of 1929 (71 P.S. § 536(b))
- Section 2106(c) of the Administrative Code of 1929 (71 P.S. § 536(c))
- Section 2111(c) of the Administrative Code of 1929 (71 P.S. § 541(c))
- Section 1421(c)(2) of the Public School Code of 1949
- Section 1303a of the Public School Code of 1949 (24 P.S. § 13-1303a)
- The Newborn Child Testing Act (35 P.S. § 623)
- The Pennsylvania Cancer Control, Prevention and Research Act (35 P.S. § 5636)²

¹ Letter from Secretary Bogen to IRRC Executive Director Sumner dated June 4, 2026. Available at: <https://www.irc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf> on page 493.

² Regulatory Analysis Form IRRC 3490 Section 8. Available at: <https://www.irc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf> on pages 1-3.

Not one of the laws cited in this lengthy list of legislation authorizes the Department to promulgate regulations concerning a “condition” in the broad manner proposed under 10-242. In fact, ten of the twelve statutes cited by the Department do not even contain the word “condition.” Only two statutes cited by the Department contain the word “condition;” Section 2111(c) of the Admin Code, and the Newborn Child Testing Act. But neither provides the Department with the authority to promulgate the proposed regulation.

The Department cites Section 2111(c) of the Administrative Code of 1929 (71 P.S. § 541(c)) as a basis for promulgating the proposed regulation.³ While this statute does contain the word “condition,” the term is not used as it relates to a person’s state of being. Instead, it is used to describe a prerequisite of school attendance.⁴ This statute provides no authority for the Department to regulate a “condition” as the Department broadly contemplates in the proposed regulation.

The Department further cites The Newborn Child Testing Act (35 P.S. § 623) as a basis for promulgating the proposed regulation.⁵ While this statute does contain the undefined term “condition,” the Department’s authority under the law is very narrowly tailored – limited to regulations regarding mandated screening of newborn children.⁶ This statute provides no authority for the Department to regulate a “condition” as the Department broadly contemplates in the proposed regulation.

3. ANALYSIS OF THE TERM “CONDITION” IN THE DISEASE PREVENTION AND CONTROL LAW

³ Regulatory Analysis Form IRRC 3490 Section 8. Available at: <https://www.irc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf> on page 2.

⁴ The statute reads: The Advisory Health Board shall make and from time to time revise a list of such communicable diseases against which children shall be required to be immunized as a **condition** of attendance at any public, private, or parochial school, including any kindergarten, in the Commonwealth. Full statute is available at: <https://www.palegis.us/statutes/unconsolidated/law-information/view-statute?SESSYR=1929&SESSIND=0&ACTNUM=175&SMTHLWIND=&CHPT=21&SCTN=11&SUBSCTN=>

⁵ Regulatory Analysis Form IRRC 3490 Section 8. Available at: <https://www.irc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf> on page 2.

⁶ The statute reads: Section 3.1. Mandated Screening and Follow-up.--Diseases and **conditions** mandated for screenings and follow-up services shall, at a minimum, include:

- (1) diseases listed under section 3(a);
- (2) diseases added by the board under section 3(d) to the list of diseases under section 3(a); and
- (3) **conditions** listed in the Recommended Uniform Screening Panel by the United States Department of Health and Human Services.

Full statute is available at: <https://www.palegis.us/statutes/unconsolidated/law-information/view-statute?sessYr=1965&sessInd=0&actNum=0251.&smthLwInd=0>

As previously noted, the Department cites two sections of the Disease Prevention and Control Law as a basis for statutory authority to promulgate the proposed regulation, and neither section contains the word “condition.” The term “condition” appears elsewhere in the Disease Prevention and Control Law in sections that are not relied upon by the Department in its justification for this new regulation.

It is striking that the Department does not even attempt to rely upon the sections of the Disease Prevention and Control Law containing the word “condition” as a basis for its proposed regulation concerning “conditions.” While the Department does not rely upon these sections of the Disease Prevention and Control Law, a review of how the legislature chose to use the term “condition” in statute is warranted given the Department’s broad usage of the term in the proposed regulation. Such a review also shows the legislature could have, but chose not to, provide the Department with the authority to regulate “conditions” more broadly.

3A. THE TERM “CONDITION” IS USED FIVE TIMES IN THE DISEASE CONTROL AND PREVENTION LAW, BUT THOSE USAGES DO NOT PROVIDE BROAD AUTHORITY TO THE DEPARTMENT

The Disease Prevention and Control Law uses the term “condition” five times throughout the statute. While the statute does not define the term “condition,” each use of the term is limited in nature.

The term “condition” first appears in Section 2 within the definition of the term “Isolation:”

(e) Isolation. The separation for the period of communicability of infected persons or animals from other persons or animals in such places and under such conditions as will prevent the direct or indirect transmission of the infectious agent from infected persons or animals to other persons or animals.⁷

Here, the term “condition” is used to define the circumstances of isolation – and not in connection with a state of the human body. Any statutory authority granted to the Department as it relates to a “condition” under this section is limited to isolation.

⁷ Disease Prevention and Control Act of 1955. Available at: <https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1955/0/0500..PDF>

The term “condition” appears for the second time in the definition of a “Reportable disease:”

(k) Reportable disease.

- (a) Any communicable disease declared reportable by regulation;*
- (b) any unusual or group expression of illness which, in the opinion of the secretary, may be a public health emergency; and*
- (c) such non-communicable diseases and **conditions** for which the secretary may authorize reporting to provide data and information which, in the opinion of the Advisory Health Board, are needed in order effectively to carry out those programs of the department designed to protect and promote the health of the people of the Commonwealth, or to determine the need for the establishment of such programs.⁸*

Here, the statute confines the Department’s authority concerning “conditions” to reporting responsibilities. Except for very specific reporting requirements, this section does not provide statutory authority to the Department as it relates to a “condition.”

The term “condition” appears a third and fourth time in Section 4, which relates specifically to reporting requirements for physicians:

Section 4. Reports. —

*(d) Every physician or every person in charge of any institution for the treatment of diseases shall be authorized, upon request of the secretary, to make reports of such diseases and **conditions** other than communicable diseases which in the opinion of the Advisory Health Board are needed to enable the secretary to determine and employ the most efficient and practical means to protect and to promote the health of the people by the prevention and control of such diseases and **conditions** other than communicable diseases. The reports shall be made upon forms prescribed by the secretary and shall be transmitted to the department or to local boards or departments of health as requested by the secretary.⁹*

⁸ Disease Prevention and Control Act of 1955. Available at:
<https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1955/0/0500..PDF>

⁹ Disease Prevention and Control Act of 1955. Available at:
<https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1955/0/0500..PDF>

Here, the term “condition” is used to describe reporting requirements – specifically reporting requirements for physicians. This section does not provide statutory authority to the Department as it relates to a “condition.”¹⁰

The term “condition” appears a fifth and final time in Section 13 with regard to testing for syphilis:

*Section 13. Prenatal Examination for Syphilis.-- (a) Every physician who attends, treats or examines any pregnant woman for **conditions** relating to pregnancy, during the period of gestation or at delivery, shall take or cause to be taken, unless the woman dissents, a sample of blood of such woman at the time of first examination, or within fifteen days thereof, and shall submit the sample to an approved laboratory for an approved serological test for syphilis. All other persons permitted by law to attend pregnant women, but not permitted by law to take blood samples, shall, unless the woman dissents, likewise cause a sample of the blood of every such pregnant woman attended by them to be taken by a physician licensed to practice in this Commonwealth and submit it to an approved laboratory for an approved serological test. In the event of dissent, it shall be the duty of the physician to explain to the pregnant woman the desirability of such a test. The serological test required by this section shall be made, without charge by the department, upon the request of the physician submitting the sample, if he submits a certificate that the patient is unable to pay.¹¹*

Here, the term “condition” is restricted to “conditions related to pregnancy.” The context is limited solely to a physician’s order regarding a blood test for syphilis, and solely during a woman’s pregnancy. This section does not provide statutory authority to the Department as it relates to a “condition.”

Nothing in the Disease Prevention and Control Law of 1955 provides open-ended statutory authority to the Department to broadly regulate a “condition.” Instead, the law provides very specific authority to the Department as it relates to a “condition,” limited to reporting requirements and isolation.

4. LEGISLATIVE INTENT OF THE DISEASE PREVENTION AND CONTROL LAW OF 1955 WAS LIMITED TO “COMMUNICABLE DISEASES”

¹⁰ The Department may argue that the second use of the term “condition” in this section provides authority to the Secretary. Such an argument should be rejected. This section of the statute deals with reporting requirements for physicians, not statutory grants of authority to the Department.

¹¹ Disease Prevention and Control Act of 1955. Available at: <https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1955/0/0500..PDF>

In 1955, Representative George John Sarraf introduced what would become the Disease Prevention and Control Law as House Bill 1619.¹² Representative Sarraf was a doctor and received his medical training at the University of Pittsburgh.¹³ He served in both World War I and World War II, volunteering to serve as a surgeon in the latter.¹⁴ His military service and medical training were held in high regard by his peers.¹⁵ Dr. Sarraf served in the House from 1931-1956, and the State Senate from 1956 until his death in 1966.¹⁶

The Legislative Journal from February 7, 1956 records the following exchange during the floor debate on House Bill 1619:

Mr. GOLDSTEIN. Mr. Speaker, what is the purpose of this bill?

Mr. SARRAF. Mr. Speaker, this bill was presented to me by the Department in order to increase, or lessen the possibility of people with communicable diseases, especially syphilis, from propagating the disease...¹⁷ (emphasis added)

Several months later, Governor George Leader signed the bill into law. A UPI article appeared in several newspapers across Pennsylvania on April 25, 1956 offering the following regarding the new statute:

*"Gov. George M. Leader has signed legislation modernizing Pennsylvania's laws relating to the control of communicable diseases...The new law accents control of such communicable diseases as tuberculosis, typhoid fever and venereal diseases."*¹⁸ (emphasis added)

The clear language of the statute, along with the legislative intent expressed on the House floor and press reports at the time of enactment all focus on communicable

¹² HB1619 of 1955. Available at: <https://www.palegis.us/legislation/bills/text/PDF/1955/0/HB1619/PN1619>

¹³ George Sarraf M.D. Member Biography. Available at: <https://archives.house.state.pa.us/people/member-biography?ID=1535>

¹⁴ Pennsylvania House of Representative House Journal, March 20, 1945, Page 1443. Available at: <https://www.palegis.us/house/session/journals?sessYr=1945&sessInd=0&pdfName=19450320.pdf>

¹⁵ Pennsylvania House of Representative House Journal, March 20, 1945, Page 1443. Available at: <https://www.palegis.us/house/session/journals?sessYr=1945&sessInd=0&pdfName=19450320.pdf>

¹⁶ George Sarraf M.D. Member Biography. Available at: <https://archives.house.state.pa.us/people/member-biography?ID=1535>

¹⁷ Pennsylvania House of Representative House Journal, February 7, 1956, Page 5901. Available at: <https://www.palegis.us/house/session/journals?sessYr=1956&sessInd=0&pdfName=19560207.pdf>

¹⁸ Latrobe Bulletin (Latrobe, Pennsylvania) · Tue, Apr 24, 1956 · Page 12. See also The Daily Herald (Monongahela, Pennsylvania) · Wed, Apr 25, 1956 · Page 7

diseases. There is nothing to suggest that there was any intent to expand the Department's regulatory authority to include a "condition," especially as broadly defined by the Department's proposed regulation.

5. THE DEPARTMENT PROPOSES A SHOCKINGLY BROAD AND SWEEPING DEFINITION FOR THE TERM "CONDITION"

The proposed regulation defines, for what appears to be the first time in Pennsylvania, the term "Condition" as follows:

*Condition – Noninfectious medical ailment or other health-related event*¹⁹

The Department's proposed definition contains two separate and very broad categories. First, a condition is a "noninfectious medical ailment."²⁰ This term is not further defined in Pennsylvania statute or regulation, but it is certainly very broad in its applicability. Noninfectious conditions that have been described as an "ailment" include:

- Acne²¹
- Headache²²
- Homesickness²³
- Ingrown Toenail²⁴
- Sleep Apnea²⁵

All of these ailments and dozens more would now fall under the expansive watch of the Department of Health as contemplated in the proposed regulation.

¹⁹ IRRG Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 3. Available at page 355 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

²⁰ IRRG Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 3. Available at page 355 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

²¹ "Our research spans a wide spectrum of dermatological conditions, ranging from common **ailments** like acne" <https://www.med.upenn.edu/gelfand/ccsd-1.html>

²² "Headache, or pain in any part of the head, is a nearly universal **ailment**." Acute Headache, by Leeran Baraness & Annalee M. Baker. Available at: <https://www.ncbi.nlm.nih.gov/books/NBK554510/>

²³ <https://www.brockport.edu/life/health-center/common-ailments/>

²⁴ "Our expert podiatrists at [Tussey Mountain Foot & Ankle Specialists](#) in State College, Pennsylvania, treat ingrown toenails. [Andrew Bernhard, DPM](#), and [Kaitlyn Bernhard, DPM](#), discuss the details of this common foot **ailment**..." Available at: <https://www.tusseyfootankle.com/blog/when-does-an-ingrown-toenail-require-a-podiatrist>

²⁵ "Weight loss and breathing-assist therapy are the keys to overcoming this common male **ailment**." Sleep Apnea Solutions, Harvard Medical School. Available at: <https://www.health.harvard.edu/healthy-aging-and-longevity/sleep-apnea-solutions>

Second, a condition is described as an “other health-related event.” While this term is not further defined in Pennsylvania statute or regulation, the Centers for Disease Control (CDC,) offers the following definition:

“...the term “health-related event” refers to any subject related to a public health surveillance system.”²⁶ (emphasis added)

The CDC further defines a “public health surveillance system” as:

“... the ongoing, systematic collection, analysis, interpretation, and dissemination of data regarding a health-related event for use in public health action to reduce morbidity and mortality and to improve health.”²⁷

The CDC cites several examples of “public health surveillance systems:”

- Behavioral Risk Factors Surveillance System (BRFSS)
- Youth Risk Behavior Surveillance System (YRBSS)
- National Health Interview Survey (NHIS)
- National Health and Nutrition Examination Survey (NHANES)²⁸

These are only a few of the “public health surveillance systems” that exist throughout the United States. While not a comprehensive list, an analysis of only these four systems provides clarity around the enormous scope of the authority the Department would assume under the proposed regulation’s use of the term “condition.”

The Centers for Disease Control operates the Behavioral Risk Factor Surveillance System (BRFSS.) Since 1984, the BRFSS annually surveys Americans on a broad variety of “health-related” topics. For example, the 2023 survey included questions on (among other things) tobacco use, alcohol consumption, seat belt use, and tanning beds.²⁹ The survey also included questions regarding firearms, including “Are any firearms now kept in or around your home?,” and “Are any of these firearms now loaded?”³⁰

²⁶ Centers for Disease Control, Updated Guidelines for Evaluating Public Health Surveillance Systems Available at: <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5013a1.htm>

²⁷ Centers for Disease Control, Updated Guidelines for Evaluating Public Health Surveillance Systems Available at: <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5013a1.htm>

²⁸ A Nationwide Framework for Surveillance of Cardiovascular and Chronic Lung Diseases, 5 Existing Surveillance Data Sources and Systems. Available at <https://www.ncbi.nlm.nih.gov/books/NBK83157/>

²⁹ <https://www.cdc.gov/brfss/questionnaires/pdf-ques/2023-BRFSS-Questionnaire-508.pdf>

³⁰ <https://www.cdc.gov/brfss/questionnaires/pdf-ques/2023-BRFSS-Questionnaire-508.pdf> page 92

The CDC also conducts the YRBSS. The 2025 survey included a broad array of subjects, including texting while driving, alcohol use, carrying a gun, bullying, smoking, vaping, birth control, eating vegetables, and sleep patterns.³¹

The CDC also conducts the NHIS. The 2026 survey included an incredibly broad array of topics, including autism, civic engagement, access to the internet, participation in local elections, volunteer activities, use of glasses, and pregnancy.³²

The CDC also conducts the NHANES. The 2023 survey included a broad array of subjects, including breastfeeding, housing, pesticide use, and the amount of money survey participants had in the bank.³³

Space does not permit a full analysis of the topics covered in these public health surveillance systems. But even the cursory review noted above shows the scope of these surveys to be incredibly broad.

Any subject covered in the BRFSS, YRBSS, NHUS, NHANES, or any other public health surveillance system is a “health-related event” under the Department’s proposal. Any “health-related event” and any “noninfectious medical ailment” qualifies as a “condition” under the Department’s proposal. **This definition of a “condition” is nearly limitless,** covering almost every facet of the human experience – and any “condition” becomes subject to the Department’s regulatory authority under the Department’s proposal. **This provides the Department with stunning, sweeping authority that is far beyond the intended scope of the legislators who drafted the underlying statute in 1955.**

6. THE DEPARTMENT ACKNOWLEDGES ITS DEFINITION OF THE TERM “CONDITION” INCORPORATES A BROAD SPECTRUM OF “EVENTS OR AILMENTS”

In its submission to IRRRC, the Department offers the following clarification concerning the new definition for the term “condition:”

³¹ 2025 State and Local Youth Risk Behavior Survey. Available at <https://www.cdc.gov/yrbbs/media/pdf/2025/2025-YRBS-Standard-HS-Questionnaire508.pdf>

³² 2026 National Health Interview Survey (NHIS) Questionnaire https://ftp.cdc.gov/pub/Health_Statistics/NCHS/Survey_Questionnaires/NHIS/2026/EnglishQuest.pdf

³³ August 2021-August 2023 Questionnaire Data - Continuous NHANES Available at <https://wwwn.cdc.gov/nchs/nhanes/search/datapage.aspx?Component=Questionnaire&Cycle=2021-2023>

*The term “condition”...includes events or ailments that impact public health... Examples of “conditions” that impact public health include photokeratitis linked to light bulbs, chemical exposure from a train derailments, and lead, carbon monoxide and pesticide illnesses.*³⁴

This statement adds “events” to the already expansive proposed definition of the term “condition.” It appears the Department believes it would have authority, for example, to implement measures concerning light bulbs or train derailments under the proposed regulation. This claim of authority simply finds no basis in statute.

7. THE DEPARTMENT’S PROPOSAL AUTHORIZES THE DEPARTMENT TO MAINTAIN DATABASES TRACKING USE OF FIREARMS, CIGARETTES, AND EVEN LIGHT BULBS

The Department’s proposed regulation includes a new definition of the term “Emerging disease or condition.” The definition states, in part:

*Emerging disease or condition—A ... condition that has been identified in a population for the first time, or that may have existed previously...Such ... condition may be caused by ... use of ... a product ... that causes ... a health-related event.*³⁵
(emphasis added)

As noted elsewhere in this comment, a “health-related event” is defined very broadly and includes an array of topics. Under the Department’s definitions, “use of a product that causes a health-related event” includes the use of countless items including (but not limited to) firearms, pesticide application devices, light bulbs, glasses, seat belts, tanning beds, alcohol, and cigarettes. The Department’s proposed regulation gives the Department authority to require reporting of an emerging disease or condition “to the Department[’s]... electronic disease surveillance system...within 24 hours.”³⁶

Putting it all together, the proposed regulation provides the Department sweeping authority to require reporting regarding an individual’s use of an almost endless list of

³⁴ IRRC Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 11. Available at page 55 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

³⁵ IRRC Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 4-5. Available at page 365-357 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

³⁶ IRRC Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 21, 25. Available at page 373, 377 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

“products” into an electronic surveillance system maintained by the Department. This sweeping proposal is not grounded in any statutory grant of authority.

8. DEPARTMENT’S DEFINITION OF “CLOSE CONTACT” INCLUDES THE TERM “CONDITION”

The Department proposes the following definition of a “close contact:”

Close contact—A person who has been in close proximity to a person with a disease, infection or condition of public health significance for a sufficient time and in a manner to have possibly been infected with that disease or condition.³⁷

Logic indicates a “close contact” pertains to infectious diseases, and the department’s proposed definition indicates it intends a “close contact” be applicable only if an individual has “possibly been infected...”³⁸ But the definition also includes “a person who has been in close proximity to a person with a...condition,” seemingly indicating that a “condition” can be infectious.

The Department contends elsewhere in its proposal that noninfectious events such as exposure to chemicals from a train derailment are “conditions” subject to its regulatory dominion, and “like infectious diseases, these events and ailments can be prevented through public health measures.”³⁹ This statement opens the door for the Department to exert authority over noninfectious “events and ailments” in the manner “like infectious diseases.”

If the Department contends that a “close contact” includes a person “in close proximity to a person” with a “noninfectious medical ailment or other health-related event” such as a train derailment, then the Department claims regulatory authority to track and regulate any individual associated with the nearly endless list of non-infectious “conditions” outlined elsewhere in this comment. There is simply no statutory authority or basis upon which the Department can claim such regulatory authority.

³⁷ IRRC Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 3. Available at page 355 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

³⁸ IRRC Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 3. Available at page 355 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

³⁹ IRRC Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 3. Available at page 55 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

The Department's definition of a "close contact" contains ambiguities that should be clarified. At the very least, the Department should remove the term "condition" from the definition of a "close contact."

SECTION II. CONCERNS REGARDING GOVERNMENT OVERREACH ARE WELL-FOUNDED

1. PAST ACTIONS TAKEN UNDER SUPPOSED AUTHORITY OF THE DISEASE PREVENTION AND CONTROL LAW GENERATED SIGNIFICANT CONCERN

The Department's proposed regulatory changes have deservedly generated significant public feedback, with over 3,000 comments submitted to IRRC. Many of these commentators recall, with great concern, overreaching actions taken by former Governor Wolf and Secretary of Health Dr. Levine during the COVID pandemic under the guise of regulatory authority supposedly found in the Disease Prevention and Control Law.

These concerns are not without basis. Repeatedly citing the Disease Prevention and Control Law as a basis for its actions, the Wolf administration did not implement measures that lasted hours or days – it chose to unilaterally impose its will for years. And instead of working with others in collaboration, Governor Wolf decided to go-it-alone – wielding the Disease Prevention and Control Law as Carte Blanche authority for his actions.

2. GOVERNOR WOLF USED THE DISEASE PREVENTION AND CONTROL LAW TO JUSTIFY BUSINESS CLOSURES

Governor Wolf cited the Disease Prevention and Control Law as justification for his infamous March 19, 2020 executive order closing businesses across Pennsylvania.⁴⁰ His actions led to widespread public outcry and significant litigation. A later review of Wolf's COVID business closure policies by Auditor General Eugene DePasquale slammed the Wolf administration's actions as inconsistent and confusing, with particular ire towards the process used to hand out waivers to allow some businesses to

⁴⁰ "No person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to members of the public." Order of the Governor of the Commonwealth of Pennsylvania regarding the closure of all businesses that are not life sustaining, Governor Tom Wolf. Available at: <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order>

continue operating.⁴¹ Incredibly, even Governor Wolf himself later agreed with the auditor general's findings:

*"...[Wolf] said a state auditor general review that found the [business] waiver program to be inconsistent and unfair was 'right on the mark.'"*⁴²

As Attorney General, Josh Shapiro also came to find Wolf's closures problematic:

*"This is an area where I think folks got it wrong," Shapiro said of school and business shutdowns.*⁴³

3. GOVERNOR WOLF USED THE DISEASE PREVENTION AND CONTROL LAW TO RESTRICT TRAVEL

Executive branch application of the Disease Control and Prevention Law during the COVID pandemic was not limited to business closures. The Pennsylvania State Police cited the Disease Prevention and Control Law as justification for pulling over and fining Anita Shaffer, a York County woman, for the "crime" of "going for a drive" in March 2020.⁴⁴ The charges were later dropped by then-York County District Attorney Dave Sunday.⁴⁵

⁴¹ "The waiver program appears to be a subjective process built on shifting sands of changing guidance, which led to significant confusion among business owners," state Auditor General Eugene DePasquale told reporters Tuesday. **Gov. Wolf's coronavirus business waiver program was inconsistent, unfair, auditor says by Angela Coulombis of Spotlight PA | Oct. 6, 2020.** Available at: <https://www.spotlightpa.org/news/2020/10/pa-coronavirus-wolf-business-waivers-unfair-inconsistent-audit-complaints/>

⁴² Gov. Tom Wolf on COVID policies: 'I'm going to be second-guessing myself until the day I die' by Katie Meyer of Spotlight PA, Dec. 15, 2022. Available at: <https://www.spotlightpa.org/news/2022/12/pa-tom-wolf-covid-second-guessing-business-waivers/>

⁴³ Josh Shapiro breaks with Democrats on COVID-19 policies in Pennsylvania gubernatorial race August 29, 2022 / 3:58 PM EDT / AP Available at: <https://www.cbsnews.com/philadelphia/news/josh-shapiro-covid-policies-pennsylvania-governor-race/>

⁴⁴ York County woman faces \$200 ticket from state police for violating Gov. Wolf's stay-at-home order, by Jan Murphy. April 3, 2020, Pennlive.com. Available at <https://www.pennlive.com/news/2020/04/york-county-woman-faces-200-ticket-from-state-police-under-gov-wolfs-stay-at-home-order.html>

⁴⁵ York County DA drops charges against woman accused of violating Gov. Wolf's stay-at-home order, April 9, 2020, LancasterOnline.com. Available at: https://lancasteronline.com/news/local/york-county-da-drops-charges-against-woman-accused-of-violating-gov-wolfs-stay-at-home/article_8d6824f8-7a5e-11ea-b0dc-1bc561407099.html

COMMONWEALTH OF PENNSYLVANIA				CITATION NO.	
NON-TRAFFIC CITATION/SUMMONS				N0040850-5	
Magisterial District Number		Docket Number		ISSUED 03/29/2020	
19-3-01				Incident/CAC/Case Number PA 2020-422907	
MO/PA Street Address 2997 CAPE HORN RD		City, State, Zip RED LION, PA 17356			
Defendant's First Name ANITA	Middle Name LYNN	Last Name SHAFFER	Suffix	Driver's Number	State PA
Defendant's Street Address		City RED LION	State PA	Zip Code 17356	
Race WHITE - W	Ethnicity NOT OF HISPANIC ORIGIN - N	Sex F	Date of Birth	Resident Status NON-RESIDENT	Social Security Number
Juvenile? NO	Parents Notified? NO	Parent First Name	Parent Last Name	Date Notified	Time Notified
Charge THE DISEASE CONTROL AND PREVENTION ACT OF 1955, 35 P.S. §21.20(A).					TITLE 35
Nature of Offense Pursuant to the Disease Control and Prevention Act of 1955, 35 P.S. §21.20(a), defendant failed to abide by the order of the Governor and the Secretary of Health, issued to control the spread of a communicable disease, requiring the closure of all non-life sustaining businesses as of 2000 hours on March 19, 2020. To wit, defendant stated that she was "going for a drive", after this violation was in effect.					Section §21.20
					Subsection (A)
					FINE
					COSTS
					JCP/AT/JJ
					CJEA/OAG
					TOTAL DUE
					162.00
					40.25
					982
Offense Date					Time
03/29/2020					12:05
Day					SUNDAY
Lab Services Req					Offense Code
NO					982
Property Record No.					Systems Code
County YORK	County Code 55	Twp-Boro-City RED LION BORO	Code 434	Zone J0843	Initial Report NO
Location BOUNDARY AVE AND S FRANKLIN AVE		Ann LCE NO			
Defendant's Signature-Acknowledges Receipt of Citation		Date 03/29/2020		ISSUED	Filed on Info. Received NO
I verify that the facts set forth in this citation are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities. I certify this filing complies with the UJS Case Records Public Access Policy.					

The citation issued to Anita Shaffer on March 29, 2020 for violating the Disease Control and Prevention Act of 1955. Anita's crime was "going for a drive."

4. SECRETARY LEVINE USED THE DISEASE PREVENTION AND CONTROL LAW TO MANDATE WEARING MASKS

In July and November 2020, citing the Disease Prevention and Control Law, then-Secretary of Health Dr. Levine signed orders requiring the wearing of masks in all public spaces.^{46 47} Over a year later, after telling school districts that each district would set its own mask policy, the Wolf administration reversed course and mandated

⁴⁶ UPDATED ORDER OF THE SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF HEALTH REQUIRING UNIVERSAL FACE COVERINGS Available at: <https://papsa-web.org/wp-content/uploads/Updated-Order-of-the-Secretary-Requiring-Universal-Face-Coverings.pdf>

⁴⁷ Health secretary signs order making masks mandatory in all public spaces in Pennsylvania WGAL8. Available at: <https://www.wgal.com/article/pa-health-secretary-signs-order-making-masks-mandatory-in-all-public-spaces/33125570>

statewide masking of children in public schools.⁴⁸ Then-Attorney General Josh Shapiro later expressed concern with these approaches:

*On mask... mandates, Shapiro said he opposed them and instead talked about a need to "educate and empower" the public, business owners, school leaders and others to protect themselves and others. "And to me, that's the approach we need to take more broadly as a public, which is to educate, empower and respect people's personal decisions and respect their personal freedom to make those choices," Shapiro told The Associated Press in an interview.*⁴⁹

5. THE LEGISLATURE, THE COURTS, AND PENNSYLVANIA VOTERS REJECTED GOVERNOR WOLF'S AND SECRETARY LEVINE'S BROAD USE OF THE DISEASE PREVENTION AND CONTROL LAW

Governor Wolf repeatedly chose to operate in a unilateral manner under the supposed authority he claimed to possess under the Disease Prevention and Control Act, repeatedly rebuffing others who were trying to speak into the situation. The legislature passed numerous bills during the COVID timeframe (many with bipartisan support) to speak into the state's response to the pandemic – the Governor vetoed them. The courts considered numerous lawsuits filed by individuals, businesses, and lawmakers – the Governor fought them.

The Pennsylvania Supreme Court eventually ruled that the Wolf administration lacked authority to implement many sweeping COVID-era policies.⁵⁰ And in a stunning rebuke, the people of Pennsylvania approved a change to the state constitution to bring the Governor's COVID -era emergency orders to an end.⁵¹ In response, Governor Wolf

⁴⁸ Gov. Tom Wolf mandates masks in Pa. schools, daycares [by Jamie Martines of Spotlight PA | Aug. 31, 2021](https://www.spotlightpa.org/news/2021/08/pa-school-mask-mandate-tom-wolf-covid-19-coronavirus/). Available at: <https://www.spotlightpa.org/news/2021/08/pa-school-mask-mandate-tom-wolf-covid-19-coronavirus/>

⁴⁹ Josh Shapiro breaks with Democrats on COVID-19 policies in Pennsylvania gubernatorial race August 29, 2022 / 3:58 PM EDT / AP Available at: <https://www.cbsnews.com/philadelphia/news/josh-shapiro-covid-policies-pennsylvania-governor-race/>

⁵⁰ Corman, J., et al. v. Beam, Pennsylvania Supreme Court, 2021. Available at: <https://law.justia.com/cases/pennsylvania/supreme-court/2021/83-map-2021-0.html>

⁵¹ Pennsylvania Voters Impose New Limits On Governor's Emergency Powers, By Marc Levy | Associated Press, Published May 19, 2021 at 10:53 AM. Available at: <https://www.wesanews.org/politics-government/2021-05-19/pennsylvania-voters-impose-new-limits-on-governors-emergency-powers>

called the peoples' vote to change the state constitution "reckless and a threat to a functioning society."⁵²

The Department of Health should learn from the powerful response to executive overreach during the COVID pandemic. Instead, it is doing the exact opposite, taking the Supreme Court's rebuke as motivation for the expansive proposed regulation before IRRC.⁵³

If the Shapiro administration truly believes the sweeping new authority proposed in this regulation is warranted, it should work with the legislature to amend the Disease Prevention and Control Law. My suspicion is such efforts would not succeed, as the proposed regulation would fail if put before the State House and Senate for a roll call vote.

CONCLUSION

The proposed regulation before the IRRC is irreparably flawed. The Department consistently cites authority it does not possess to propose a regulation that does not have the support of the legislature, the courts, or the people of Pennsylvania.

By turning to the regulatory process to push through sweeping new authority, the Department fails to heed the hard-learned lessons from the COVID pandemic. Instead, the Shapiro administration doubles-down on Governor Wolf's heavy-handed approach concerning the Disease Prevention and Control Law – an approach that was rejected by the legislature, the auditor general, the courts, the citizens of Pennsylvania, and even (in hindsight) by Governor Wolf.

Governor Shapiro himself questioned two key Wolf-era policies grounded in the Disease Prevention and Control Law – Wolf's business closures and Levine's mask mandate.⁵⁴ But now, the Shapiro administration seeks to expand regulatory authority to grant broad and sweeping new authority enabling executive overreach on a scale not seen even under the Wolf administration.

⁵² Pennsylvania Voters Impose New Limits On Governor's Emergency Powers, By Marc Levy | Associated Press, Published May 19, 2021 at 10:53 AM. Available at: <https://www.wesaneews.org/politics-government/2021-05-19/pennsylvania-voters-impose-new-limits-on-governors-emergency-powers>

⁵³ "The foregoing decision influenced the Department's proposed amendments to this subsection..." IRRC Regulatory Analysis Form 10-242 completed by the Department of Health. Proposed Regulation page 207. Available at page 251 of the PDF available at: <https://irrc.state.pa.us/docs/3490/AGENCY/3490PRO.pdf>

⁵⁴ Josh Shapiro breaks with Democrats on COVID-19 policies in Pennsylvania gubernatorial race August 29, 2022 / 3:58 PM EDT / AP Available at: <https://www.cbsnews.com/philadelphia/news/josh-shapiro-covid-policies-pennsylvania-governor-race/>

The Department should withdraw the proposed regulation. If it does not, IRRC must reject it.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Lawrence", with a long horizontal flourish extending to the right.

John Lawrence
State Representative
Commonwealth of Pennsylvania