



This probably cannot be challenged, AT THIS STAGE, as it is just a proposal and is open to comment. However, if this becomes in force regulation, the following are basis for pre-emptive challenges.

Proposed provision / issue	Possible violated jurisdiction	Potential legal basis	How it could be violated once enforced
§ 27.60c — Department/local health authority access to students for contact tracing/partner services	PA law	Disease Prevention and Control Law (35 P.S. §521.5)	If the statute authorizes disease-control measures only within the framework established by statute/regulation, the Department could exceed its delegated authority by creating a new power to obtain direct, private access to students that the General Assembly never expressly authorized. This is particularly important given <i>Corman</i> , where the PA Supreme Court held that general statutory language did not give the Secretary "blanket authority" to create new regulatory requirements.
§ 27.60c — Access to a child while at school	PA law	Pennsylvania School Code / laws governing schools and parental authority	If the regulation effectively gives a state health official authority to remove or privately interview a student without parental consent, a court could examine whether the Department has intruded into authority assigned by statute to parents, schools,



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§ 27.60c — "Unobstructed and in private" access	U.S. Constitution	Fourth Amendment	school districts, or other agencies. The precise statutory authority would need to be mapped carefully. A compelled governmental intrusion into a student's person, particularly a private government interview or questioning, could potentially constitute a search/seizure requiring constitutional justification. The strength of this claim would depend heavily on what officials actually do with the student and whether the student is free to leave.
§ 27.60c — Private access to students without parents	U.S. Constitution	Fourteenth Amendment — substantive due process / parental liberty interests	Parents have constitutionally protected liberty interests concerning the care, custody and control of their children. A regulation that substantially interferes with those interests without adequate legal authority or procedural safeguards could potentially implicate substantive or procedural due process.
§ 27.60c — Collection of information concerning a student's contacts/associations	U.S. Constitution	First Amendment — freedom of association/privacy	If contact tracing requires government collection of information identifying a student's relationships, associations, organizations, communications or expressive activities, the First Amendment could potentially be implicated. The government would



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§ 27.60c — Compelled disclosure/interview	U.S. Constitution	Fifth/Fourteenth Amendment due process principles	need an adequate justification and sufficiently tailored means. Depending on what information is demanded and what consequences attach to refusing, compelled questioning could raise due-process or other constitutional issues. This is much more fact-dependent than the statutory-authority challenge. <i>Corman</i> held that the existing §27.60 and cited statutes did not give the Secretary carte blanche to create new disease-control rules. If the new regulation attempts to cure that problem simply by expanding §27.60 through agency rulemaking, the question becomes whether the Department itself has statutory authority to confer the additional power through regulation.
§ 27.60c — Regulation expands §27.60 after <i>Corman</i>	PA law	Pennsylvania Supreme Court precedent — <i>Corman v. Beam</i>	An agency can exercise only authority delegated by the legislature. If §27.60c creates a power that cannot reasonably be traced to the Department's enabling statutes, a court could invalidate the regulation as ultra vires—beyond the agency's authority.
§ 27.60c — Regulation effectively creates a new substantive governmental power	PA law	Administrative-law / ultra vires doctrine	



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§ 27.60c — Agency attempts to do through regulation what it could not do through existing authority	PA law	Nondelegation / limits of legislative delegation	If the underlying statute is interpreted as giving the Department essentially unlimited discretion to determine what restrictions it may impose, a challenge could argue that the legislature improperly delegated legislative power without sufficient standards. This is a more difficult argument under modern Pennsylvania law, but it is potentially relevant. If the Department uses §27.60c to accomplish something that legally constitutes a substantive rule but fails to comply with required rulemaking procedures, the resulting regulation or enforcement action could be challenged as procedurally invalid. <i>Corman</i> is particularly relevant because the Court emphasized that the Department could not bypass required rulemaking procedures by relying on general disease-control authority.
§ 27.60c — Regulation establishes a substantive rule without proper rulemaking authority/procedure	PA law	Commonwealth Documents Law / Regulatory Review Act / Administrative Agency Law	The Department would need to demonstrate that the legislature actually authorized it to compel providers to report each immunization to a state database. If the statute authorizes disease reporting but not this particular information-collection system or
§ 27.36 — Mandatory reporting of immunizations	PA law	Disease Prevention and Control Law / Department of Health enabling statutes	



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§ 27.36 — Mandatory disclosure of vaccination information	U.S. Constitution	Fourteenth Amendment — privacy/liberty interests	mandatory reporting structure, the regulation could be challenged as exceeding delegated authority. Mandatory government collection of personal medical information could potentially implicate constitutional privacy/liberty interests. However, this would be a more difficult constitutional claim than the ultra-vires argument because governments have substantial authority to collect public-health information.
§ 27.36 — Medical information held by government	PA Constitution	Article I, §1 — inherent rights/liberty	Pennsylvania's constitutional protection of individual liberty could potentially provide an independent basis for challenging governmental collection/use of sensitive medical information. Pennsylvania courts sometimes interpret the Pennsylvania Constitution more protectively than its federal counterpart.
§ 27.36 — Mandatory provider reporting	PA law	Pennsylvania medical privacy/confidentiality statutes	If another Pennsylvania statute protects particular patient information or establishes specific conditions under which it may be disclosed, the regulation cannot simply override that statute. The relevant confidentiality statutes would need to be



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§ 27.36 — Database requirements exceed statutory purpose	PA law	Statutory-construction / ultra vires	compared against the precise information §27.36 requires. Even if the Department has authority to collect certain communicable-disease information, a court could ask whether that authority extends to every immunization, including vaccinations unrelated to a currently reportable disease or condition. The broader the reporting requirement becomes, the more important the statutory connection becomes. If a federal statute or valid federal regulation occupies the relevant field or directly conflicts with the Pennsylvania requirement, the state regulation could be preempted under the Supremacy Clause. This would require identifying an actual federal law that conflicts; the Supremacy Clause by itself doesn't establish the conflict.
Either provision — conflict with federal law	U.S. law	Federal preemption	If enforcement by a state official deprives someone of a federal constitutional right, §1983 can provide a federal cause of action. This is the mechanism through which many constitutional challenges to state regulations are actually litigated.
Either provision — constitutional violation by state actors	U.S. Constitution + federal law	42 U.S.C. §1983	



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Either provision — enforcement before actual harm occurs	U.S. Constitution / federal procedure	Pre-enforcement challenge	An affected person or organization could potentially seek declaratory and injunctive relief before violating the regulation, provided they can demonstrate standing and a sufficiently credible threat of enforcement.
Either provision — arbitrary application	PA law / U.S. Constitution	Administrative-law arbitrary/capricious principles / due process	If officials apply the regulation inconsistently, irrationally, or in ways that depart substantially from its stated purpose, the particular enforcement action could potentially be challenged even if the regulation itself survives facial review.



Strongest case:

1. Does the General Assembly actually authorize §27.60c?
2. Does the General Assembly actually authorize mandatory §27.36 reporting?
3. Does the proposed regulation exceed the scope of the enabling statutes?
4. Does the regulation improperly accomplish something that requires legislative action?
5. Did DOH follow all required Pennsylvania rulemaking procedures?
6. Does the new regulation conflict with *Corman's* interpretation of the Department's statutory

Implementation-Specific:

7. Fourth Amendment/search-and-seizure issues involving student access.
8. Parental liberty/due-process rights.
9. Pennsylvania constitutional privacy/liberty protections.
10. Statutory medical-information/confidentiality protections.