C. James Robert von Scholz SC
Advocate / Agent / Federal Lobbyist
Direct Tel. +1.212.444.2670
Direct Fax. +1.212.590.6136
www.birchhillchambers.com
jvonscholz@bhchambers.com

Thursday, November 5, 2026

BY WEBSITE SUBMISSION: https://rules.cityofnewyork.us/rule/amendment-rules--relating-to-syndromic-surveillance/

NO HARDCOPY SENT

New York City Department of Health and Mental Hygiene
Office of the General Counsel
Gotham Center
42-09 28th Street 14th Fl., CN 30
Long Island City, New York 11101-4132

Re: Public Comment on Proposed Amendments to Article 11 of the New York City Health Code-Syndromic Surveillance

Dear General Counsel:

I am C. James Robert von Scholz SC, a registered representative appearing before the New York City Office of Administrative Trials and Hearings ("OATH"). I respectfully submit this public comment concerning the proposed amendment to § 11.03(d) of Article 11 of the New York City Health Code.

I support effective syndromic surveillance and recognize its importance to the health and safety of New Yorkers. The proposed amendment would improve the Department of Health and Mental Hygiene's ability to identify emerging threats and respond promptly to changing public-health conditions.

At the same time, the amendment would remove existing limits on reportable data elements and personally identifying information while giving the Department broad discretion to determine the form, manner, and frequency of reporting. The final rule should therefore include clear standards governing necessity, data minimization, confidentiality, security, transparency, provider implementation, and the collection and use of identifiable information.

These safeguards would not impair effective surveillance; rather, they would strengthen the rule's legal durability, improve compliance, protect public trust, and help ensure that the City collects reliable information without imposing unnecessary privacy or operational burdens.

Interest and General Position

In proceedings before OATH, registered representatives regularly encounter the practical consequences of agency rules, including questions of notice, clarity, consistent administration, evidentiary reliability, and the distinction between binding requirements and informal guidance. From that standpoint, a rule should provide regulated parties and affected members of the public with enough information to understand the nature and limits of the government's authority.

The Department proposes to expand the scope of its syndromic-surveillance program to reflect current practice and provide greater flexibility to identify and monitor a broader range of public-health threats. The proposal is grounded in the Department's public-health authority under New York City Charter §§ 556, 558, and 1043, and the notice states that the rulemaking is proceeding under Charter § 1043.

The Department has identified substantial benefits associated with the program. Syndromic surveillance permits reports to be transmitted close to real time and can reveal patterns involving symptoms, chief complaints, and other information before a diagnosis is made or a specific disease-reporting requirement applies. The system has also been used to monitor respiratory illnesses, infectious-disease investigations, heat-related illness, hypothermia, overdoses, gunshot wounds, and the health effects of serious air-quality events.

These are legitimate and important governmental objectives.

The concern is not whether the City should maintain a modern syndromic-surveillance program. It should. The concern is whether the final rule will establish sufficiently clear limits and safeguards for the expanded discretion that the proposal would confer.

Principal Benefits of the Proposal

The proposed amendment offers several material benefits to the City and the public.

First, it would allow faster detection of emerging disease patterns and environmental or other health threats. A citywide surveillance system can identify clusters and trends that may not be apparent to an individual provider. Earlier detection may permit earlier investigation, focused outreach, and more targeted interventions.

Second, the amendment would allow the Department to adjust reporting specifications as technology, medical practice, and public-health threats change. The present proposal would replace a fixed list of data elements with authority to require reports in a form, manner, and frequency specified by the Department. Reasonable technical flexibility can prevent the reporting system from becoming outdated and avoid the need to amend the Health Code whenever a data format or operational specification changes.

Third, the system can help the City distinguish isolated clinical events from broader patterns requiring investigation. Properly used, surveillance data may support interventions directed to the particular population, location, or condition at issue rather than broader measures affecting persons who are not connected to the identified threat.

Fourth, more timely information may improve the City's allocation of personnel and other public-health resources. Reliable trend data can assist the Department in determining where investigation, testing, outreach, treatment linkage, or public communication is most urgently needed.

For these reasons, the final rule should preserve the Department's ability to operate an effective and adaptable surveillance program.

Concerns Requiring Clarification or Mitigation

The proposal would remove the existing enumeration of potentially reportable data fields and delete language limiting compelled disclosure of patient identity to

suspected or confirmed outbreaks. The Department explains that identifiable information may be necessary for other public-health functions and that the changes would align the Health Code with current practice. That explanation identifies the Department's operational objective, but it does not itself establish enforceable limits on what identifiable information may be demanded, when it may be demanded, how long it may be retained, or for what purposes it may later be used.

The phrase "condition of public health interest" may properly accommodate emerging threats, but its breadth makes limiting standards especially important. Without a necessity standard, the proposal could be interpreted to authorize collection of a wide range of clinical and identifying information whenever the Department determines that the information is useful. The final rule should instead require a reasonable relationship between each required data element and a defined public-health surveillance, investigation, or intervention purpose.

Expanded collection also increases privacy and security risks. Even when records are legally confidential, collecting and centrally retaining additional identifiable health information creates practical exposure to unauthorized access, misuse, mistaken linkage, improper disclosure, and cybersecurity incidents. These risks may increase when information passes among providers, qualified entities, contractors, and government systems.

Public trust is likewise an operational concern.

If patients believe that an emergency-department, urgent-care, hospital, or clinic visit will routinely result in unrestricted transmission of identifiable information to the government, some individuals may hesitate to seek care or may withhold information from providers. Clear limitations and plain-language disclosure of the program's protections can reduce that concern.

The proposed flexibility may also create uncertainty for reporting entities. Frequent or inadequately explained changes to data fields, formats, or reporting intervals may require costly system modifications and may produce incomplete,

inconsistent, or inaccurate data. A surveillance program is only as useful as the quality and comparability of the information it receives.

Finally, material reporting obligations should not be imposed solely through informal or unpublished directives. The notice acknowledges that the proposed amendments were not included in the Department's Fiscal Year 2027 regulatory agenda because alternative sub-regulatory actions had been considered. Technical specifications may appropriately be addressed outside the Health Code, but material expansions of the categories of identifiable information collected, entities regulated, purposes served, or frequency of reporting should receive appropriate notice and public scrutiny.

Requested Final-Rule Safeguards

I respectfully recommend that the Board adopt the following safeguards:

1. **Purpose limitation.** The final rule should provide that required information must be reasonably necessary to identify, monitor, investigate, prevent, or control an outbreak, unusual manifestation of disease, unusual disease, or other specifically identified condition of public-health interest.
2. **Minimum-necessary collection.** The Department should require only the least identifying information reasonably sufficient to accomplish the stated public-health purpose. Data should be collected in de-identified, coded, aggregated, or otherwise limited form whenever that form can reasonably satisfy the surveillance objective.
3. **Tiered standards for identifiable information.** Routine surveillance should ordinarily use non-identifying or minimally identifying information. Limited identifying information should be permitted when needed to evaluate a defined signal or conduct enhanced surveillance. Direct identifiers should be required only when reasonably necessary for a documented function such as case investigation, contact follow-up, linkage to care, verification of a serious threat, or prevention of material public-health harm.

4. **Written necessity determination.** Before requiring a materially new category of sensitive or directly identifying information, the Department should document the information sought, the public-health purpose, why less identifying information is inadequate, the anticipated duration of collection, and the applicable confidentiality and security controls.
5. **Express confidentiality and use restrictions.** The final rule should expressly subject all syndromic-surveillance information to the confidentiality protections applicable to epidemiological and surveillance records. Access and use should be confined to authorized public-health personnel and agents acting within defined duties. Information should not be used for unrelated civil, criminal, immigration, licensing, benefits, employment, or commercial purposes unless independently required by law.
6. **Data-security requirements.** The rule or binding implementation standards should require secure electronic transmission, encryption at rest and in transit, multifactor authentication, least-privilege access, access logging, audit controls, incident detection, vendor oversight, and a tested response process for unauthorized access or disclosure.
7. **Retention and deletion standards.** The Department should establish retention periods tied to the surveillance purpose and delete or de-identify information when identifiable retention is no longer reasonably necessary. Emergency or event-specific data requirements should expire when the underlying need ends unless the Department documents a continuing justification.
8. **Controls governing agents and contractors.** Any qualified entity, contractor, or other agent receiving or processing surveillance information should be subject to written purpose limitations, confidentiality duties, security requirements, incident-reporting obligations, audit rights, and return-or-destruction requirements.

9. **Publication of reporting specifications.** The Department should publish current data specifications, definitions, validation requirements, reporting frequencies, effective dates, and version histories. Those materials should clearly distinguish mandatory requirements from recommendations or technical guidance.
10. **Reasonable implementation periods.** Except in a documented emergency, reporting entities should receive adequate advance notice, testing opportunities, technical assistance, and phased implementation for material changes. Temporary inability to transmit electronically because of system failure or exceptional operational circumstances should be addressed through a defined contingency process.
11. **Procedural limits on material changes.** Technical adjustments may be implemented administratively when they remain within the rule's stated scope. Material and durable expansions of identifiable-data collection, reporting purposes, covered entities, or reporting burdens should proceed through the rulemaking process required by the Charter.
12. **Public transparency.** The Department should publish a plain-language description of the program explaining the categories of information collected, the purposes for collection, who may access the information, the general retention framework, and the available confidentiality and security protections. Public reporting should use aggregation and suppression methods designed to prevent reasonable re-identification.
13. **Equity and anti-stigma review.** Before expanding surveillance for conditions associated with a small population, sensitive diagnosis, neighborhood, disability, housing status, or other potentially stigmatizing characteristic, the Department should evaluate whether the proposed collection and reporting practices could cause disproportionate harm. Individual-level collection should be avoided when aggregate information is sufficient.

14. **Periodic review.** The Department should periodically review each required data element, reporting frequency, retention period, and category of authorized use. Requirements that are no longer necessary or proportionate should be withdrawn.
15. **Compliance clarity.** Any enforceable reporting obligation should be stated with sufficient precision to permit a reporting entity to determine what must be submitted, when it must be submitted, and how compliance will be evaluated. A provider should not face adverse consequences based on an unpublished specification, ambiguous instruction, or material requirement imposed without reasonable notice.

These measures would also support the objectives identified in the rulemaking certifications: (a) the Law Department certified that the proposal was drafted to accomplish its authorized purpose, was not in conflict with other applicable rules, was narrowly drawn to the extent practicable and appropriate, and contained an adequate statement of basis and purpose; and (b) the Mayor's Office of Operations further certified that the proposal was understandable and minimized compliance costs consistent with its purpose.

Incorporating clear substantive and procedural safeguards into the final rule would give practical effect to those objectives.

Requested Action

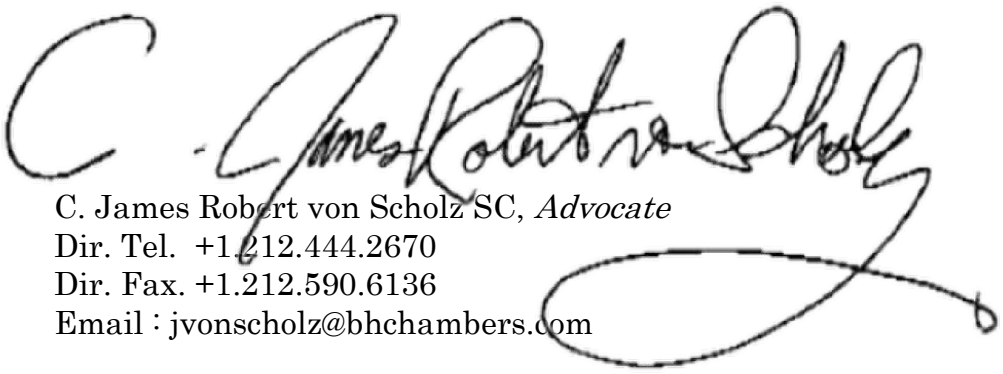
I respectfully request that the Board retain the proposal's core public-health capabilities but revise the final rule to include an express necessity standard, minimum-necessary collection, tiered limits on identifiable information, enforceable confidentiality and security protections, retention limits, transparent reporting specifications, reasonable implementation procedures, and formal rulemaking for material program expansions.

A carefully bounded rule will better serve both the City and the public. It will preserve the speed and adaptability of syndromic surveillance while reducing avoidable legal, privacy, security, compliance, and public-trust risks. Clear limits will

also improve the consistency and reliability of administration should disputes later arise concerning the meaning or enforcement of the rule.

Thank you for considering this comment.

Respectfully submitted,



C. James Robert von Scholz SC, *Advocate*
Dir. Tel. +1.212.444.2670
Dir. Fax. +1.212.590.6136
Email : jvonscholz@bhchambers.com

cc : File