

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Health

Regulation/Package Title: School Reporting of Body Mass Index and weight screening

Rule Number(s): 3701-65-01

Date: 3/31/16 REVISED

**Rule Type:**

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

## **Regulatory Intent**

1. Please briefly describe the draft regulation in plain language.

*The regulation establishes a process for collecting and reporting body mass index (BMI) and weight of its students for those boards of education of a city, exempted village, local school district and governing authority of a chartered nonpublic school who have decided to conduct BMI screenings.*

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

*3313.674*

3. Does the regulation implement a federal requirement? *NO*

**Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*NO*

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

*The regulation is a result of R.C. 3313.674 not federal legislation. The state legislation and regulation are in response to the childhood obesity issue. This is an opt-in program therefore screening is not mandatory. The legislation does require the district to report the aggregated result of the screening to ODH if it decides to conduct screenings. The regulation provides a process for which to collect and report data in a manner that ensures student confidentiality and is compliant with the legislation.*

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

*To provide guidelines for those entities that have chosen to collect BMI data on their student population.*

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

*Number of entities submitting BMI data reports to the Ohio Department of Health*

## **Development of the Regulation**

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

**77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117**

**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

*November 10, 2015 via email the following stakeholders were contacted:*

*Ohio AAP; Ohio Association of School Nurses, Ohio School Boards Association, Ohio Department of Education and Association of Ohio Health Commissioners*

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

*ODH received no input from stakeholders for the proposed amendments to the regulations.*

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? Institute of Medicine, committee on childhood obesity, Centers for Disease Control and Prevention. How does this data support the regulation being proposed?**

*The grade levels identified for data collection represent optimal developmental periods for measuring BMI. The reporting tool is one developed by the Centers for Disease, Control and Prevention.*

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

*R.C. 3313.674 creates the reporting requirement once a district decides to conduct the BMI screening. That same legislation also sets forth the data to be reported to ODH. ODH was directed to create, and set forth in a rule, the manner in which the aggregated data should be reported to it.*

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

*The reporting requirement is directly from R.C. 3313.674. ODH is following the statutory requirements from that section.*

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

*ODH participated in numerous round table discussions with stakeholders, legislators and partnering state agencies prior to developing the initial regulation in 2011.*

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community. ODH will continue to work collaboratively with the Ohio Department of Education and other school associations to provide technical assistance to those schools who choose to screen students.**

### **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;** *School districts who decide to screen BMI will be impacted by the regulation and the legislation requiring the reporting. R.C. 3313.674 includes the school districts that may decide to screen for BMI and thus be impacted by the regulation. The legislation includes “the governing authority of each chartered nonpublic school.” ODH did not set forth the entities that must report.*
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and** *The impact to the districts, if any, is time for personnel to conduct screenings and report the data. This cost varies depending on the manner in which schools choose to conduct the screenings. Neither the legislation nor the regulation dictate the manner in which a school must conduct the screenings.*
- c. Quantify the expected adverse impact from the regulation.** *Because there is no set manner in which a school district must conduct the screening, ODH cannot adequately quantify an impact on the district. At no point is a district required to conduct the screening it is only once the district decides to conduct the screening that it must report the aggregated data to ODH per R.C. 3313.674.*

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

*The language in the OAC is from R.C. 3313.674. Screening students is voluntary but if it is done, the statute requires the district to report its aggregated data to ODH.*

### **Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses?** *School districts are not required to participate and do the screening however if they do screen the legislation requires the aggregated data be reported to ODH therefore ODH is without the authority to exempt a school district from reporting the screening results.*

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?** *There are no fines or other sanctions associated with this regulation*

18. **What resources are available to assist small businesses with compliance of the regulation?** *The screening is voluntary and the districts have the authority to determine the means in which to conduct the screening.*