



# OHIO BOARD OF DIETETICS

77 SOUTH HIGH STREET, 18<sup>TH</sup> FLOOR  
COLUMBUS, OH 43215-6119 - (614) 466-3291  
[www.dietetics.ohio.gov](http://www.dietetics.ohio.gov)

## GUIDELINE J

### Dietitian Guide to Diet and Nutrition Orders

The purpose of this document is to provide information to dietitians about current laws and regulations related to nutrition order writing. The document may be used to assist dietitians in the challenge of applying pertinent laws and rules to specific practice situations as appropriate for improved nutritional outcomes.

The Ohio Dietitian Licensure law, Section 4759.01 of the Ohio Revised Code (ORC) defines the dietitian scope of practice.

- (A) “The practice of dietetics” means any of the following:
- 1) Nutritional assessment to determine nutritional needs and to recommend appropriate nutritional intake, including enteral and parenteral nutrition;
  - 2) Nutritional counseling or education as components of preventive, curative restorative healthcare;
  - 3) Development, administration, evaluation, and consultation regarding nutritional care standards.”

Although the dietitian’s scope of practice includes recommending appropriate nutritional intake, it is not specific to writing diet/nutrition orders. Therefore, the dietitian must be clear when writing in a medical chart that he/she is communicating a nutritional recommendation (which is clearly included in the dietitian's scope of practice).

While the scope of dietetic practice is not meant to limit dietitians from performing other activities not specific to their scope such as writing diet/nutrition orders, such tasks may be limited by other professional scopes of practice, federal and state laws or rules, and CMS guidelines, and/or policies and procedures of the particular institutions.

For example, the State Medical Board of Ohio in Division 4731.34 (A)(3)(b) of the Ohio Medical Practice Act describes that:

\*\*\*(A) A person shall be regarded as practicing medicine \*\*\* who does any of the following:

\*\*\*(3) In person or, regardless of the person’s location, through the use of any communication, including oral, written, or electronic communication, does any of the following:

\*\*\*(b) Prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease.

(emphasis added)

Therefore, if a dietitian writes diet/nutrition orders, such conduct may constitute the unlicensed practice of medicine, unless the action was directed by the physician through clear, approved facility protocols or privileges. (see page 4).

There are multiple locations in medical records where dietitians typically document. Various forms are used to communicate nutritional assessments, recommended nutritional care plans and diets, and follow up activities. It is important for the dietitian to understand the facility processes that occur once a recommendation is made and how the steps to implement the diet / nutrition recommendations will occur. The prudent dietitian will make certain that a recommendation made on any form is not perceived as an order between the time that the recommendation is written and an order is issued by the responsible physician.

Order forms tend to vary from facility to facility, and the meaning of certain nutrition and diet orders also may vary. Therefore, it is important to make sure that all persons involved clearly understand the meaning of particular nutrition and diet orders and understand the steps that occur for them to be implemented.

### **MEDICARE PART A INPATIENT AND PART B OUTPATIENT**

The Centers for Medicare and Medicaid Services (CMS) have provided that to be eligible to receive CMS payment, healthcare facilities must meet minimum healthcare facility performance requirements as stipulated in federal regulations. CMS regulations specify that the physician in charge of the patient's care must order the therapeutic diet {see 2005 Conditions of Participation (CoP), state survey director manual, §482.28 (b)(1)} "Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the patients." "In accordance with State law and hospital policy, a dietitian may assess a patient's nutritional needs and provide recommendations or consultations for patients, but the patient's diet must be prescribed by the practitioner responsible for the patient's care" (admitting or attending physician, MD or DO)." (emphasis added)

The requirement that a physician prescribe therapeutic diets does not negate the dietitian's responsibility to verify the appropriateness of the diet/nutrition order for the patient and recommend appropriate nutritional intake. Furthermore, the physician has the option on a patient-by-patient basis of requesting in writing that a qualified licensed dietitian, working within their individual scope of practice and hospital-granted privileges, conduct a nutrition assessment and recommend a diet order, or to implement a hospital-approved nutrition protocol.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) requires "a qualified individual" by education, training and experience, competence or applicable licensure, law or regulation to provide nutrition services. The American Dietetic Association promotes the Registered Dietitian (RD) as the practitioner most qualified to meet the JCAHO requirements. However, unless otherwise restricted, Ohio law permits full dietetic practice by Registered and Licensed (RD, LD) dietitians, non-registered Licensed dietitians (LD); and by Limited Permit (LP) licensed dietitians. Additionally, Dietetic Technicians (DT) and Dietetic Technicians Registered (DTR) and Nutrition Associates (graduates of ADA approved four year dietetics programs who have not completed internships) may practice dietetics in Ohio to the extent deemed appropriate to protect the public by the Licensed Dietitian supervising their practice.

### **VERBAL ORDERS:**

The regulation that provides the authority for verbal and telecommunication orders for Ohio licensed nursing homes has been adopted in other institutions. CMS has approved use of verbal orders only for emergency situations, and states that verbal orders should be used infrequently in CMS regulated facilities.

A dietitian documenting acceptance of a diet/nutrition order from a physician should include how the order was received (verbal, telephone, fax, electronic), name of the physician from whom it was received, and any other pertinent information required per established professional standards of practice or facility procedures, i.e. date, time, duration, frequency.

Dietetic Technicians and Nutrition Assistants (graduates of baccalaureate degree programs in dietetics) may practice dietetics under the supervision of dietitians in Ohio pursuant to sections 4759.10 (B) and (E) ORC, but are not authorized to accept verbal, faxed, telephone or electronic orders.

Verbal orders are to be used infrequently and may include dietitians as long as the institutions' policies and procedures include them within the list of professionals who may send or receive verbal orders. The Ohio Department of Health Administrative Rules for Licensed Nursing Homes Rule 3701-17-13 OAC provides that the licensed dietitian is among those who can receive verbal orders from a physician.

### **Rule 3701-17-13 OAC:**

- (B) \*\*\* "If orders are given by telephone, they shall be recorded with the licensed health professional's name and the date, and the order signed by the person who accepted the order. All orders, including facsimile, telephone, or verbal orders, shall be signed and dated by the physician or other licensed health professional working in collaboration with the physician who gave the order within fourteen days after the order was given."

(emphasis added)

- (1) "**Telephone orders** shall not be accepted by a person other than a licensed nurse on duty, another physician or a pharmacist, except that a licensed physical, occupational or respiratory therapist, audiologist, speech pathologist, **dietitian**, or other licensed health professional may receive, document and date medication and treatment orders concerning his or her specific discipline for residents under their care, to the extent permitted by applicable licensing laws.
- (2) The nursing home may accept signed orders issued by a licensed health professional having prescriptive authority by facsimile transmission if the home has instituted procedural safeguards for authenticating and maintaining confidentiality of the facsimile order, and for handling it in an expedient and priority manner.
- (3) An entry that is an electronic record as defined in section 3701.75 of the Revised Code may be authenticated by an electronic signature in accordance with section 3701.75 of the Revised Code." (Reference: licensed nursing home rules, Appendix B)

### **DELEGATION:**

#### **Rule 4731-23-02 OAC Delegation of medical tasks.**

Section 4731.053 ORC defines the practice of medicine. Rule 4731-23-02 OAC specifies how physicians (MDs and DOs) may delegate certain medical tasks to others. "Delegate" means to transfer authority for the performance of a medical task to an unlicensed person. "Unlicensed Person" means an individual who is not licensed or otherwise specifically authorized by the Revised Code to perform the delegated medical task." Rule 4731-23-03 provides: "A physician shall not delegate the practice of medicine as defined in section 4731.34 of the Revised Code unless specifically authorized to do so in the Revised Code \*\*\*". The Dietetic Practice Act, Chapter 4759 of the Ohio Revised Code permits dietitians to engage in that part of medicine as defined in the dietetic scope of practice, section 4759.01(A) ORC. The issue here is that writing a diet/nutrition order appears to be the practice of medicine and is not a medical task that could be delegated, and that order writing is not specifically included in the scope of practice for dietitians.

Physicians may attempt to delegate nutrition ordering by writing or issuing a verbal order to a dietitian to "perform a consult and write an order" or "assess and treat". Dietitians should be cautious in these situations. The dietitian should not "write an order" or "treat" but can perform a nutritional assessment, complete a nutritional consult, develop recommended nutrition care plans including recommendations for diet, supplements, vitamins, and minerals, etc.

The dietitian should be clear in communicating the results of nutritional consults or assessments in the form of recommendation(s). Specific recommendations (for diets, dietary supplements, etc.) could then be put into orders by the responsible physician, or the physician could communicate a verbal order to the appropriately licensed professional, making sure that the order is authenticated by physician signature as required.

#### **AUTHORIZED INITIATION OF A NUTRITION ORDER WRITING PROTOCOL OR POLICY:**

A nutrition policy or protocol that has been approved by the hospital's governing body and included in the hospital's policies and procedures may assign specific clinical privileges to dietitians in accordance with state laws and institutional policies.

**Protocols** are defined guidelines for practice that may be used in specific clinical situations and may be governed by the laws and rules of multiple professions. All applicable laws and rules must be adhered to when protocols are utilized. There are no laws or rules specific to protocols in the Dietetic Practice Act (Chapter 4759 ORC). However, the Pharmacy Practice Act in Ohio specifically defines the use of drug related protocols (Rule 4729-5-01 OAC), and prohibits persons who do not have prescriptive authority from engaging in the distribution and administration of drugs. The Medical, Nursing and Pharmacy Boards in Ohio have issued a joint statement regarding the use of protocols ("Joint Regulatory Statement Regarding the Use of protocols to Initiate or Adjust Medications," August, 2002).

**Institutional policies and privileging** permits specific clinical privileges to be performed by certain clinicians and should be clearly documented and approved by the institution's governing body, and should be compliant with applicable Ohio laws and regulations. **Clinical Privileging**, according to CMS, is a facility led process by which medical staff and hospital governance develop and implement a process to ensure safe and quality patient care. It may be reasonable to include licensed dietitians in nutrition policies as the qualified nutrition professionals who may be privileged in this manner to initiate nutrition consults, perform nutrition assessments, and to recommend therapeutic diets, water and fluids, dietary supplements, etc. CMS Interpretive Guideline §482.28(b)(1) instructs that:

"In accordance with State law and hospital policy, a dietitian may assess a patient's nutritional needs and provide recommendations or consultations for patients but the patient's diet must be prescribed by the practitioner responsible for the patient's care." (emphasis added)

Individual dietitians considering privileging as a way to expand their scope of practice should conduct a self-assessment of their education, training, experience, and expertise and do it on a regular basis. ADA's Scope of Dietetics Practice Framework may be used as a tool. CMS does not restrict facility privileges to physicians only. Instead, a CMS notice (11/12/04) says that other professions may be granted privileges to provide a medical level of care and/or conduct procedures in a hospital. Joint Commission or Healthcare Facilities Accreditation program standards are concordant with the CMS and similarly do not impose restrictions on facilities to grant privileges. The CMS notice emphasizes the responsibility and accountability of the hospital governing body, together with the medical staff, in ensuring that all individuals seeking such privileges "...are individually evaluated by the medical staff and that those practitioners possess current qualifications and demonstrated competencies for the privileges granted. Privileging procedures vary among facilities, and may be affected by state rules and regulations. Therefore, the procedures need to be explored fully by the dietitian before embarking on the process.

Diet recommendations made in this manner (by protocol, policy, privilege) still need to be ordered and/or issued for each patient by the responsible physician before being implemented.

#### **ADJUSTING NUTRITION RELATED MEDICATIONS:**

Dietitians are reminded that **prescriptive authority** is required in Ohio for professionals to write orders for, or adjust, dosages for drugs, vitamins and minerals used in therapeutic doses, or to prescribe some specific medical treatments. Dietitians do not have prescriptive authority and should not engage in or provide the appearance of ordering or adjusting prescription medications.

## **SUMMARY**

In summary, it would be prudent for the dietitian to:

- Be aware of the pertinent federal and state laws and rules that apply to the particular practice, including those for order writing
- Be clear when communicating nutrition recommendations
- Review the use of forms to communicate nutrition information at each facility of practice as they can vary significantly
- Be cautious about writing nutrition recommendations on “order forms”. This may be perceived as writing a nutrition order and may constitute the unlicensed practice of medicine.
- Understand the policies, protocols, privileging and procedures for order writing and the implementation of nutrition recommendations in each facility of practice
- Understand that clinical privileges are granted to individual practitioners whose competencies have been evaluated and not members of an entire department or work unit
- Periodically review:
  - Forms so that they are up-to-date and easily understood
  - Standards of Practice and Standards of Professional Performance in rules 4759-6-01 and 02 of the Ohio Administrative Code
  - Best practice guidelines for documentation from practice groups and ADA
  - Approved abbreviations for medical record documentation
  - Federal and state laws and rules, interpretive guidelines, facility policies, procedures, protocols and privileging

When evaluating roles and responsibilities and seeking to clarify tasks outside scope of practice such as order writing, it is important to understand that expertise, training, and skills of performance may vary from dietitian to dietitian, and that protection of the public is foremost.

## **Reading List and References – Diet and Nutrition Orders**

American Dietetic Association. §482.28 Conditions of Participation: Food and Dietetic Services Interpretive Guidelines for Therapeutic Diet Orders [white paper]. Available at [http://www.eatright.org/ada/files/Therapeutic\\_Diet\\_Order\\_White\\_Paper\\_083006.pdf](http://www.eatright.org/ada/files/Therapeutic_Diet_Order_White_Paper_083006.pdf)

Centers for Medicare & Medicaid Services. Centers for Medicare & Medicaid Services (CMS) Requirements for Hospital Medical Staff Privileging. Ref: S&C-05-04. November 12, 2004. Available at [www.cms.hhs.gov](http://www.cms.hhs.gov).

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Centers for Medicare & Medicaid Services. State Operations Manual. Appendix A-Survey Protocol, Regulations and Interpretive Guidelines for Hospitals (Rev. 1, 05-21-04). Available at [www.cms.hhs.gov](http://www.cms.hhs.gov).

“Clinical Privileges: Missing piece of the puzzle for clinical standards that elevate responsibilities and salaries for registered dietitians?” JADA, January 2002, Volume 102 Number 1, pp 123-132.

“Clinical Privileging for Registered Dietitians: A Regulatory Perspective”, JADA, April 2007, Volume 107, Number 4, pp. 558-560

"Clinical Privileging: What It Is...And Isn't ", McCauley, S., Hager, M., JADA, March, 2009, Volume 109, Number 3, pp. 400-402

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<http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter05-04.pdf>. Accessed December 23, 2008.

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“Hospital Therapeutic Diet Orders and the Centers for Medicare & Medicaid Services: Steering through Regulations to provide Quality Nutrition Care and Avoid Survey Citations”, JADA, February 2006, Volume 106, Number 2, pp. 198-204.

Joint Regulatory Statement Regarding the Use of Protocols to Initiate or Adjust Medications, State Medical Board of Ohio, State of Ohio Board of Pharmacy, Ohio Board of Nursing, February 2003.

Keiselhorst K., Skates J., Tritchett E. American Dietetic Association: Standards of Practice in Nutrition Care and Updated Standards of Professional Performance. JADA, April, 2005, Volume 105, pp. 641-645.

Laws and Rules Governing the Practice of Dietetics in the State of Ohio, Chapter 4759 Ohio Revised Code and Ohio Administrative Code.

Laws and Rules Governing the Practice of Medicine in the State of Ohio, Chapter 4731 Ohio Revised Code and Ohio Administrative Code.

McCauley, S., Hager, M., "Why Are Therapeutic Diet Orders and Issue Now and What Does It Have To Do with Legal Scope of Practice?", JADA, September 2009, Volume 109, Number 9, pp. 1515-1519.

“Nutrition Diagnosing and Order Writing: Value for Practitioners, Quality for Clients”, JADA, November, 2003, Volume 103, Number 11, pp. 1470-1472.

Ohio Nursing Home Administrative Rules §3701-17-13, Medical Supervision, effective date October 20, 2001, rev. 9/1/2000, 10/1/2006.

Sprague L. Hospital oversight in Medicare: Accreditation and deeming authority. NPHF Issue Brief 2005; 802: 1-5.

“Therapeutic Diet Order Writing Current Issues and Considerations”, M.H. Hager, PhD, RD, Topics in Clinical Nutrition, March, 2007, Vol. 22, No.1, pp 28-36.

\* Denotes documents that should be read first. Sections in the State Operations Manual, Appendix A, that apply are §§ 482.11, 482.12, 482.24 . § 482.23 (c) discusses verbal orders.