

5123:2-6-07

General provisions and compliance in the administration of prescribed medications, performance of health-related activities, and performance of tube feedings.

(A) List of certified MR/DD personnel and certified registered nurses

The department shall establish an online Internet-based database listing registered nurses holding valid certification issued under rule 5123:2-6-04 of the Administrative Code and for listing MR/DD personnel holding valid certification issued under section 5123.45 of the Revised Code and rule 5123:2-6-06 of the Administrative Code in prescribed medication administration and health-related activities, nursing delegation of administration of food and prescribed medication via stable labeled gastrostomy tube and stable labeled jejunostomy tube, and nursing delegation of subcutaneous insulin injection.

(1) The department shall operate the registered nurse certification database list and the MR/DD personnel certification database list.

(2) The department shall provide read and write access to the database to all certified registered nurses teaching registered nurses pursuant to rule 5123:2-6-04 of the Administrative Code. Certified registered nurse trainers shall be responsible for maintaining current information on trained registered nurses on said database list.

(3) The department shall provide read and write access to the database to all certified registered nurses teaching MR/DD personnel pursuant to rule 5123:2-6-06 of the Administrative Code. The certified registered nurse trainers teaching registered nurses shall be responsible for maintaining current information on trained MR/DD personnel on said database.

(4) The department shall provide read only public access to the database.

(B) MR/DD personnel documentation requirements in the categories specified under paragraphs (A)(1) to (A)(9) of rule 5123:2-6-03 of the Administrative Code

(1) Documentation of all prescribed medications, health-related activities, subcutaneous insulin injections, or delegated tube feedings given, applied, missed, held, or refused shall be done on a prescribed medication administration record or treatment administration record indicating the name or initials of the MR/DD personnel administering a prescribed medication or treatment, time and date, and, when appropriate, observations or difficulties noted.

(2) The employer of MR/DD personnel shall maintain a means of identifying initials and signatures of MR/DD personnel making entries in the prescribed medication administration record and treatment administration record.

(C) All prescribed medications administered pursuant to this chapter shall be

administered according to the written direction of an appropriately licensed health care professional and according to the training received by MR/DD personnel pursuant to section 5123.43 of the Revised Code and rules 5123:2-6-05 and 5123:2-6-06 of the Administrative Code.

(D) MR/DD personnel requirements for reporting errors in the categories specified under paragraphs (A)(1) to (A)(9) of rule 5123:2-6-03 of the Administrative Code

(1) Any error by MR/DD personnel in the administration of oral or application of topical prescribed medications, performance of health-related activities, or performance of delegable tube feedings that results in physical harm to the individual shall be immediately reported to an appropriate licensed health care professional.

(2) Any error by MR/DD personnel in the administration of oral or application of topical prescribed medications, performance of health-related activities, or performance of delegable tube feedings shall be reported in accordance with rule 5123:2-17-02 of the Administrative Code if the error meets the definition of major unusual incident or unusual incident as those terms are defined in that rule.

(E) Compliance and quality assessment reviews of individuals receiving services from certified supported living providers; individuals receiving residential support services from certified home and community-based services providers, if the services are received in a community living arrangement that includes not more than four individuals; or individuals residing in residential facilities of five or fewer beds, excluding ICFs/MR

(1) A registered nurse, employed by or under contract with the county board, shall assist with consultation and quality assessment oversight.

(2) The quality assessment registered nurse, employed by or under contract with the county board, shall complete quality assessment reviews in a format prescribed by the department so that a review of each individual receiving administration of prescribed medications or performance of health-related activities by MR/DD personnel pursuant to this rule in the county is conducted at least once every three years. The quality assessment registered nurse, employed by or under contract with the county board, may conduct more frequent reviews if the registered nurse or county board, provider, or department determines there are issues to warrant such.

(3) In settings where the county board directly provides supported living or home and community-based services in a community living arrangement that includes not more than four individuals or operates a residential facility of five or fewer beds, excluding an ICF/MR, a registered nurse who is not directly employed by the county board and is a disinterested party of the

board shall complete quality assessment reviews in a format prescribed by the department so that a review of each individual receiving administration of prescribed medications or performance of health-related activities by MR/DD personnel pursuant to this rule in the county is conducted at least once every three years. The registered nurse may conduct more frequent reviews if the registered nurse, county board, provider, or department determines there are issues to warrant such.

(4) Quality assessment reviews shall be completed in a format prescribed by the department.

(5) Quality assessment reviews shall include, but are not limited to, the following:

(a) Observation of administering prescribed medication or performing health-related activities;

(b) Review of documentation of prescribed medication administration and health-related activities for completeness of documentation and for documentation of appropriate actions taken based on parameters provided in prescribed medication administration and health-related activities training;

(c) Review of all prescribed medication errors from the past twelve months;

(d) Review of the system used by the employer or provider to monitor and document completeness and correct techniques used during oral and topical prescribed medication administration and performance of health-related activities.

(6) The quality assessment registered nurse shall provide a copy of the quality assessment review to the county board and the provider of services in which the site is located within ten business days of the quality assessment review and shall recommend to the county board and the provider of services steps to take to improve the functioning of the trained MR/DD personnel and maintain compliance with this chapter.

(7) The quality assessment registered nurse shall maintain a copy of each quality assessment review performed by the quality assessment nurse or by the registered nurse as specified in paragraphs (E)(2) and (E)(3) of this rule.

(8) The quality assessment registered nurse, employed by or under contract with the county board, as specified under paragraph (E) of this rule shall act as a resource for the county board and related program and service providers concerning health management issues and may serve to assist in expanding health care services in the community.

(F) If the employer of MR/DD personnel believes or is notified by the county board, the

department, a delegating licensed nurse or the registered nurse responsible for quality assessment pursuant to this rule that MR/DD personnel have not safely administered or will not safely administer prescribed medications, have not safely performed or will not safely perform health-related activities, have not safely administered or will not safely administer food or prescribed medication via stable labeled gastrostomy tube and stable labeled jejunostomy tube, or have not safely administered or will not safely administer subcutaneous insulin injections, the employer shall prohibit the action from continuing or commencing. MR/DD personnel shall not engage in the action or actions subject to an employer's prohibition.

(1) When the employer prohibits the action from continuing or commencing, the employer shall do the following:

(a) Notify the MR/DD personnel of the prohibition and immediately make other staffing arrangements so that administration of prescribed medication, performance of health-related activities, administration of food or prescribed medication via stable labeled gastrostomy tube and stable labeled jejunostomy tube, or administration of subcutaneous insulin injections are completed as prescribed, including compliance with the requirements of this chapter of the Administrative Code;

(b) Immediately notify the department;

(c) If applicable, immediately notify the county board via the major unusual incident reporting system pursuant to rule 5123:2-17-02 of the Administrative Code; and the county board, as applicable, shall notify the registered nurse responsible for quality assessment oversight under paragraph (E) of this rule;

(d) If applicable, immediately notify the delegating licensed nurse.

(2) The employer shall ensure all corrective action is taken prior to allowing the MR/DD personnel to resume the administration of prescribed medication, performance of health-related activities, administration of food or prescribed medication via stable labeled gastrostomy tube and stable labeled jejunostomy tube, or administration of subcutaneous insulin injections.

(3) The employer shall notify the department and, as applicable, the county board, the registered nurse responsible for quality assessment under paragraph (E) of this rule, or the delegating licensed nurse of the corrective action taken.

(G) Procedures for suspending the certification of MR/DD personnel without a hearing pending the outcome of an investigation

(1) The department may suspend a certificate issued to MR/DD personnel under rule 5123:2-6-06 of the Administrative Code without a hearing pending the

outcome of an investigation if the MR/DD personnel has not or will not safely administer prescribed medication or perform health-related activities, administer food or prescribed medication via stable labeled gastrostomy tube and stable labeled jejunostomy tube, or administer subcutaneous insulin injections.

(2) Immediately following the suspension of certification, the department shall notify the MR/DD personnel and the employer of the MR/DD personnel and, as applicable, the county board superintendent or designee, the registered nurse responsible for quality assessment oversight under paragraph (E) of this rule, and the delegating licensed nurse.

(3) When the department has suspended a certificate without a hearing, the department shall expedite the investigation and any revocation proceedings. If the department determines as a result of its investigation or at any other time that the suspension is not warranted, the department shall immediately revoke its suspension and reinstate the suspended certificate. Upon reinstatement, the department shall immediately notify the MR/DD personnel and all entities notified under paragraph (G)(2) of this rule of the reinstatement.

(H) Procedures for revoking a certificate issued to MR/DD personnel under rule 5123:2-6-06 of the Administrative Code

(1) The department shall revoke the certification of MR/DD personnel to administer prescribed medication or perform health-related activities, administer food or prescribed medication via stable labeled gastrostomy tube or stable labeled jejunostomy tube, or administer insulin by subcutaneous injection if there is evidence after an investigation that MR/DD personnel:

(a) Have failed to comply with the applicable criminal background check requirements of sections 5126.28 and 5126.281 of the Revised Code and rules 5123:2-1-05, 5123:2-1-05.1, and 5123:2-3-06 of the Administrative Code;

(b) Have failed to exercise proper regard for the health, safety and welfare of the individual;

(c) Have failed to maintain continued certification requirements pursuant to rule 5123:2-6-06 of the Administrative Code; or

(d) Have failed to take corrective action to maintain compliance with this chapter.

(2) Prior to revoking the MR/DD personnel's certification, the department shall notify the MR/DD personnel and the employer of the MR/DD personnel, in writing, of its intent to revoke the MR/DD personnel's certification and specify a reason for such finding. The department shall also provide notice, as

applicable, to the county board superintendent or designee, the registered nurse responsible for quality assessment under paragraph (E) of this rule, and the delegating licensed nurse.

- (3) The MR/DD personnel may appeal the department's decision to revoke certification by requesting a hearing within seven days of receiving the notification issued under paragraph (H)(2) of this rule.
- (4) A hearing shall be held within twenty-one calendar days of receiving the request for a hearing. The hearing officer shall hold a hearing at a site mutually agreed upon by the MR/DD personnel and the department. Any person shall have the opportunity to present evidence at the hearing. The hearing officer shall determine whether the department's decision to revoke the certification was based upon the MR/DD personnel's noncompliance with this chapter. The hearing officer shall issue a written recommendation to the director or the director's designee within ten calendar days of the hearing.
- (5) The director or the director's designee shall issue a written decision to the MR/DD personnel, the employer of the MR/DD personnel, and any entities notified under paragraph (H)(2) of this rule within five calendar days of receipt of the hearing officer's recommendations.

(I) Procedures for accepting complaints and conducting investigations

- (1) Any complaint regarding the administration of prescribed medication, performance of health-related activities, and performance of tube feedings by MR/DD personnel pursuant to the authority granted under section 5123.42 of the Revised Code or compliance with rules adopted under this chapter shall be made to the department using the process established under rule 5123:2-17-01 of the Administrative Code. This paragraph shall not be construed to allow MR/DD personnel, a representative of MR/DD personnel, or an employee organization as defined in Chapter 4117. of the Revised Code to make a complaint to the department regarding a personnel action.
- (2) Any complaints related to the scope of nursing practice shall be referred to the Ohio board of nursing, which regulates nursing practice in accordance with Chapter 4723. of the Revised Code.
- (3) When a quality assessment registered nurse under paragraph (E) of this rule receives a complaint or identifies concerns based on a quality assurance review conducted pursuant to paragraph (E) of this rule related to the performance or qualifications of MR/DD personnel, that registered nurse shall do an initial investigation including a discussion with the MR/DD personnel and his/her employer. After completing the initial investigation, the quality assessment registered nurse under paragraph (E) of this rule shall contact and work with the nurse consultant or a designee of the department to

assure that the cases are handled in a consistent manner statewide

(J) Corrective action

- (1) In the event that an investigation conducted pursuant to paragraph (I) of this rule results in a finding of failure to comply with the requirements of this chapter, the county board shall work with the MR/DD personnel's employer to assure immediate action is taken to correct the issue to assist the county board or the MR/DD personnel's employment agency in meeting compliance with this chapter.
- (2) The department shall review alleged county board violations of this chapter pursuant to MR/DD personnel performing oral and topical prescribed medication administration, performing health-related activities, or administering food or prescribed medication via a stable labeled gastrostomy tube or a stable labeled jejunostomy tube. The department may make recommendations to assist the county board in achieving compliance.
- (3) If the provider is found to be in violation of this chapter pursuant to MR/DD personnel performing prescribed medication administration, performing health-related activities, or administering food or prescribed medication via a stable labeled gastrostomy tube or a stable labeled jejunostomy tube, the department may make recommendations to assist the provider in achieving compliance.
- (4) The department shall review compliance within thirty days of the corrective action. If the department determines that corrective action does not bring the county board, program or any other provider into substantial compliance with this chapter, the department may revoke a certificate obtained pursuant to rule 5123:2-6-06 of the Administrative Code, or take other actions as allowed by the Revised Code or Administrative Code.
- (5) The county board program or any other provider of services may appeal the findings of the department within seven days of receipt of notification by the department.

 - (a) The request to appeal shall be made in writing to the director of the department and shall explain the basis for the appeal.
 - (b) The director or the director's designee shall review the appeal within fourteen days of the receipt of the request. The purpose of the review shall be to determine if the findings were based upon the county board's or other provider's of service including the MR/DD personnel's employer's noncompliance with this chapter.
 - (c) Within seven days of the date of review of the appeal by the director or the director's designee, the decision of the director or the director's

designee shall be made in writing to the county board or other providers of service including the MR/DD personnel's employer(s). The decision of the director or the director's designee shall be final and shall be based on the review of evidence.

(K) Immunity from liability

MR/DD personnel who administer prescribed medications, perform health-related activities or perform tube feedings pursuant to the authority granted under section 5123.42 of the Revised Code and rule 5123:2-6-03 of the Administrative Code are not liable for any injury caused by administering the prescribed medications, performing the tasks, or performing the tube feedings if both the following apply:

- (1) The MR/DD personnel acted in accordance with the methods taught in training completed in compliance with section 5123.42 of the Revised Code and rules 5123:2-6-05 and 5123:2-6-06 of the Administrative Code; and
- (2) The MR/DD personnel did not act in a manner that constitutes wanton or reckless misconduct.

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