

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 11 MIDWIVES
PART 2 CERTIFIED NURSE MIDWIVES

16.11.2.1 ISSUING AGENCY: New Mexico Department of Health.
[16.11.2.1 NMAC - Rp, 16 NMAC 11.2.1, 10/15/09]

16.11.2.2 SCOPE: This rule applies to any person seeking to practice or currently practicing as a certified nurse-midwife in the state of New Mexico.
[16.11.2.2 NMAC - Rp, 16 NMAC 11.2.2, 10/15/09]

16.11.2.3 STATUTORY AUTHORITY: This rule is authorized by Sections 9-7-6 (E), 24-1-3 (R) and 24-1-4.1 NMSA 1978.
[16.11.2.3 NMAC - Rp, 16 NMAC 11.2.3, 10/15/09]

16.11.2.4 DURATION: Permanent.
[16.11.2.4 NMAC - Rp, 16.NMAC 11.2.4, 10/15/09]

16.11.2.5 EFFECTIVE DATE: 10/15/09, unless a later date is cited at the end of a section.
[16.11.2.5 NMAC - Rp, 16 NMAC 11.2.5, 10/15/09]

16.11.2.6 OBJECTIVE: This rule governs the licensure and practice of certified nurse-midwives (CNMs) in New Mexico.
[16.11.2.6 NMAC - Rp, 16 NMAC 11.2.6, 10/15/09]

16.11.2.7 DEFINITIONS:

- A. "ACNM" means the American college of nurse-midwives.
- B. "Board" means the certified nurse-midwifery advisory board established under these rules.
- C. "Certified nurse-midwife (CNM)" means an individual educated in the two disciplines of nursing and midwifery, who is certified by the ACNM or its designee.
- D. "CNM license" means a document issued by the department identifying a legal privilege and authorization to practice within the scope of this rule.
- E. "Contact hour" means 50-60 minutes of an organized learning experience or two hours of planned and supervised clinical practice relevant to CNM practice, approved by one of the following:
 - (1) accreditation council for continuing medical education (ACCME);
 - (2) ACNM;
 - (3) American college of obstetricians and gynecologists (ACOG);
 - (4) American academy of physician assistants (AAPA);
 - (5) American academy of nurse practitioners (AANP);
 - (6) nurse practitioners in women's health (NPWH); or
 - (7) other clinician-level continuing education accrediting agencies approved by the department.
- F. "Continuance" means the adjournment or postponement of a trial or other proceeding to a future date.
- G. "Department" means the department of health.
- H. "Division" means the public health division.
- I. "Incompetence" means a failure to possess and apply the knowledge, skill or care that is ordinarily possessed and exercised by CNMs or as defined by the ACNM "core competencies for basic midwifery practice".
- J. "Midwife" means a responsible and accountable professional who works in partnership with women to give the necessary support, care and advice during pregnancy, labor and the postpartum period, to conduct births on the midwife's own responsibility and to provide care for the newborn and the infant. Midwifery practice as conducted by the CNM is the independent management of women's health care, focusing particularly on common primary care issues, family planning and the gynecologic needs of women, pregnancy, childbirth, the postpartum period and the care of the newborn. The CNM practices within a health care system that provides for consultation, collaborative management or referral as indicated by the health status of the client. A CNM practices in accordance with the ACNM "standards for the practice of midwifery".

K. "Peer review" means the assessment and evaluation of CNM practice by other CNMs or other health care providers to measure compliance with established institutional or legal standards. In the peer review process, a CNM's practice undergoes scrutiny for the purpose of professional self-regulation. All participants in the peer review process have the opportunity to enhance professional knowledge and skills.

L. "Primary care" means the provision of integrated, accessible health care services by clinicians who are accountable for addressing the large majority of presenting health care needs, developing sustained partnerships with clients, and practicing within the context of family and community.

M. "Quality assurance" means monitoring structural, procedural and outcome indicators as they relate to accepted standards.

N. "Quality improvement" means modifying the process for providing care in order to improve outcomes. Modifications are based upon the measurement of parameters such as evidence-based best practices, patient satisfaction, clinical outcomes, population-specific care, appropriate use of technology and resources, and access to care

O. "Valid CNM-client relationship" means a relationship that assures safe prescribing of a dangerous drug by a CNM to an individual. Such a relationship includes:

(1) the CNM has sufficient information to assure that the dangerous drug is indicated and necessary for treatment of a condition;

(2) the CNM has sufficient information to assure that the dangerous drug is not contraindicated for the individual;

(3) the CNM provides the individual with appropriate information on the proper dosage, route, frequency and duration of the drug treatment;

(4) the CNM informs the individual of possible untoward effects and side effects of the treatment;

(5) the CNM provides for care in the event of an untoward effect or a side effect that requires care;

(6) the CNM provides for client education regarding the condition and its treatment to secure treatment compliance and preventive self-care;

(7) the CNM provides for appropriate follow-up care, including further testing, treatment and/or education; and

(8) the CNM documents, at minimum, the indication, drug and dosage in a health record for the individual.

[16.11.2.7 NMAC - Rp, 16 NMAC 11.2.7, 10/15/09]

16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE:

A. ACNM "*core competencies for basic midwifery practice*", available to download at <http://www.midwife.org/display.cfm?id=484>.

B. ACNM "*standards for the practice of midwifery*", available to download at <http://www.midwife.org/display.cfm?id=485>.

C. "*ACNM home birth practice handbook*", available to purchase at <http://www.shopacnm.com/>.
[16.11.2.8 NMAC - N, 10/15/09]

16.11.2.9 LICENSURE:

A. Licensure requirements: A CNM licensed in New Mexico shall hold a license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico and shall hold current certification by ACNM or its designee. The department may deny licensure to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. A CNM license is not transferable.

B. Initial licensure.

(1) An applicant for licensure to practice as a CNM in New Mexico shall submit to the department:

- (a) a completed application;
- (b) proof of holding a valid license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico;

- (c) proof of current certification by ACNM or its designee;

- (d) the fee designated in Subsection E of this section.

(2) An initial CNM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of this subsection and shall expire on the expiration date of the license that satisfies the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico. A CNM license shall be valid for a maximum of two years.

C. Licensure renewal.

(1) A CNM's renewed license shall expire on the date of expiration of the license that satisfies the New Mexico board of nursing's requirements for practicing as a registered nurse in New Mexico.

(2) An applicant for licensure renewal shall submit to the department:

(a) a completed application, postmarked or electronically submitted at least 15 calendar days before the expiration of her CNM license;

(b) proof of holding a valid license that meets the requirement of the New Mexico board of nursing to practice as a registered nurse in New Mexico for the period the renewed CNM license will cover;

(c) proof of current certification by ACNM or its designee;

(d) proof of having met the continuing quality assurance and continuing education requirements in Paragraphs (3) and (4) of this subsection; and

(e) the fee designated in Subsection E of this section; an additional fee shall be charged for applications received later than 15 calendar days before the expiration date.

(3) Continuing education: proof of a minimum of 30 contact hours completed during the two years preceding renewal is required for license renewal. Fifteen of the contact hours shall be pharmacology-related. The following options, subject to audit and approval by the department, may be accepted in place of continuing education contact hours:

(a) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection E of 16.11.2.7 NMAC, will count for twice the number of contact hours for which the presentation is approved; the same presentation cannot be credited more than once;

(b) sole or primary authorship of one nurse-midwifery related article published in a department-approved professional medical or midwifery journal per licensure period;

(c) completion of a formal university or college course directly related to nurse-midwifery practice. Each university or college unit shall be credited as 15 hours of continuing education; and

(d) acting as primary preceptor for a nurse-midwifery or certified midwifery student; each 10 hours of precepting shall be credited as one continuing education hour; verification shall be provided by an ACNM accredited nurse-midwifery education program.

(4) Quality management: documentation of participation during the preceding two years in a system of quality management meeting the approval of the department is required for license renewal. Quality management includes peer review, quality assurance and quality improvement as defined in 16.11.2.7.

D. Reinstatement of a lapsed CNM license.

(1) The requirements for reinstatement of a CNM license that has lapsed within the four previous years are the same as those for license renewal, listed in Subparagraphs (a) through (e) of Paragraph (2) of Subsection C of this section, except that the application may be submitted at any time within the four years of the license's lapsing, and the fee designated in Subsection E of this section.

(2) An applicant for CNM licensure whose license has lapsed more than four years prior may apply for license reinstatement or may apply for a new CNM license.

E. Fees: the department shall charge applicants the following fees for licensure services:

(1) two hundred dollars (\$200) for initial licensure;

(2) one hundred dollars (\$100) for license renewal;

(3) fifty dollars (\$50.00) additional for renewing a license when the complete application is not postmarked or electronically submitted at least 15 calendar days before the current license's expiration date;

(4) fifty dollars (\$50.00) additional for reinstatement of a lapsed license;

(5) twenty dollars (\$20.00) for verifying licenses by FAX or letter;

(6) twenty dollars (\$20.00) for replacing a lost license card; and

(7) thirty dollars (\$30.00) for replacing a license certificate (8 ½" x 11" size).

F. Change of address: a CNM shall report a change of address or phone number to the department within 30 days.

[16.11.2.9 NMAC - Rp, 16 NMAC 11.2.8, 10/15/09]

16.11.2.10 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:

A. Scope of practice: midwifery practice as conducted by a CNM is the independent management of women's health care, focusing particularly on common primary care issues, family planning and the gynecologic needs of women, pregnancy, childbirth, the postpartum period, the care of the newborn, and treatment of male partners of female clients for sexually transmitted diseases. A CNM independently prescribes, distributes and administers dangerous drugs and devices appropriate to a client's condition. A CNM practices within a health care system that provides for consultation, collaborative management or referral as indicated by the health status of the

client. A CNM practices in accordance with the ACNM “standards for the practice of midwifery”. Practice guidelines for home births should be informed by the “ACNM home birth practice handbook”

B. Prescriptive authority.

(1) Dangerous drugs are prescription drugs other than a controlled substance which have been determined by law to be unsafe for self-administration and which are enumerated in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978).

(a) A CNM may independently prescribe, distribute or administer dangerous drugs and devices appropriate to a client's condition.

(b) A CNM who prescribes, distributes or administers a dangerous drug or device shall do so in accordance with the New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances are drugs contained in schedules I-V of the Controlled Substances Act (Section 30-31-1 NMSA 1978). The criteria for being contained in any of the schedules of the Controlled Substances Act include that the drug has potential for abuse, or that the drug may lead to physical dependence or psychological dependence, or both.

(a) A CNM shall not prescribe nor distribute controlled substances in schedule I of the Controlled Substances Act.

(b) A CNM shall not prescribe, distribute or administer controlled substances in schedules II-V unless she is registered with the New Mexico board of pharmacy and the United States drug enforcement administration to prescribe, distribute and administer controlled substances.

(c) A CNM who chooses to prescribe, distribute or administer controlled substances in schedules II-V of the Controlled Substances Act shall first register with the New Mexico board of pharmacy and the United States drug enforcement administration.

(d) A CNM who prescribes, distributes or administers a controlled substance in schedules II-V of the Controlled Substances Act shall do so in accordance with the Controlled Substances Act.

(3) An individual employed as a CNM by the United States military, the United States veterans administration or the United States public health service and operating in the official capacity of that employment who is prescribing, distributing and administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the provisions of Paragraph (2) of this subsection.

(4) Prescription pads: a CNM may prescribe by telephone, by written prescription or by e-mail. A CNM prescription shall have the CNM's name, office address and telephone number printed on it. In the event that a CNM is writing a prescription printed with the names of more than one CNM, the name of the CNM writing the individual prescription shall be indicated. The name and address of the client, the date of the prescription, the name and quantity of the drug prescribed, and directions for use shall be included on a prescription.

(5) Labeling: when distributing a drug, a CNM shall label it with the client's name, the date, instructions for use, and the CNM's name, address and telephone number.

(6) Except in emergencies, CNMs shall not prescribe controlled substances for themselves, members of their households or immediate family members.

C. Other rules: a CNM shall fulfill the requirements of all relevant department rules including:

- (1) "Bureau of Vital Records and Health Statistics," 7.2.2 NMAC;
- (2) "Control of Disease and Conditions of Public Health Significance," 7.4.3 NMAC;
- (3) "Newborn Genetic Screening," 7.30.6 NMAC;
- (4) "Prevention of Infant Blindness," 7.30.7 NMAC.

D. Limitation of physician liability: any consultative relationship between a CNM and a physician shall not by itself provide the basis for finding a physician liable for any acts or omissions of the CNM. [16.11.2.10 NMAC - Rp, 16 NMAC 11.2.9, 10/15/09]

16.11.2.11 LICENSE DENIAL, SUSPENSION OR REVOCATION; DISCIPLINARY ACTION: The department may deny, revoke or suspend any license held or applied for or reprimand or place a license on probation on the grounds stated in this rule pursuant to Section 24-1-3(R) NMSA 1978.

A. Grounds for action.

(1) Incompetence. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. Conduct of such a character that could have resulted in harm to the client or to the public from the act or omission or series of acts or omissions constitutes incompetence, whether or not actual harm resulted.

(2) Unprofessional conduct. For purposes of this rule "unprofessional conduct" includes, but is not limited to, the following:

- (a) verbally or physically abusing a client;
- (b) engaging in sexual contact with or toward a client;
- (c) abandonment of a client;
- (d) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
- (e) practice which is beyond the scope of licensure;
- (f) dissemination of a client's health information or treatment plan to individuals not entitled to such information and where such information is protected by law from disclosure;
- (g) falsifying or altering client records for the purpose of reflecting incorrect or incomplete information;
- (h) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation, or deceit;
- (i) aiding, abetting, assisting or hiring an individual to violate any duly promulgated rule of the department;
- (j) failure to follow established procedure and documentation regarding controlled substances;
- (k) failure to make or keep accurate, intelligible entries in records as required by the ACNM "standards for the practice of midwifery";
- (l) obtaining or attempting to obtain a license to practice certified nurse midwifery for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process;
- (m) practicing midwifery in New Mexico without a valid New Mexico license or permit, or aiding, abetting or assisting another to practice midwifery without a valid New Mexico license;
- (n) delegation of midwifery assessment, evaluation, judgment or medication administration to non-licensed persons; or
- (o) failure to provide information requested by the department pursuant to this rule within ten (10) business days of receiving the request.

(3) Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.

(4) Dereliction of any duty imposed by law.

(5) Conviction of a felony.

(6) Failure to report in writing to the division, a complaint or claim that has been made against the CNM's practice as a registered, certified or licensed health care provider in any jurisdiction, including as a registered nurse. Such notification shall include the credentialing jurisdiction and the location, time and content of the complaint or claim. It shall be made within ten (10) business days of the CNM becoming aware of the complaint or claim.

(7) Conduct resulting in the suspension or revocation of a registration, license or certification to perform as a health care provider.

(8) Failure to report a midwife or CNM who appears to have violated the rule for the practice of licensed or certified nurse midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability unless the person acted in bad faith or with malicious purpose.

(9) Violation of any of the provisions of this rule.

B. Disciplinary proceedings: disciplinary proceedings shall be conducted in accordance with the Uniform Licensing Act (ULA) (Section 61-1-1, NMSA 1978).

(1) Filing of a complaint.

(a) A written complaint must be filed with the division before a disciplinary proceeding can be initiated.

(i) A complaint is an allegation of (a) wrongful act(s) or omission(s).

(ii) A complaint may include knowledge of a judgment or settlement against a licensee.

(b) A written complaint may be filed by any person, including a member of the board.

(2) Investigation of a complaint.

(a) All complaints alleging a violation of the rules adopted by the department shall be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in a notice of contemplated action (NCA) being issued by the department if a violation exists or a dismissal of the complaint because no actionable violation exists.

- (3) Notice of contemplated action.
 - (a) The NCA shall be drafted by the department.
 - (b) The director of the division, or his designee shall sign all NCAs.
 - (c) The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.
- (4) Request for a hearing, notice of hearing and request for continuance.
 - (a) Every licensee shall be afforded notice and an opportunity to be heard.
 - (b) Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.
 - (c) Once a hearing has been scheduled, if a request for a continuance is made it shall be presented to the department's hearing officer, in writing, at least 10 days prior to the scheduled hearing. The hearing officer may approve or deny the request.
 - (d) If a person fails to appear after requesting a hearing, the department may proceed to consider the matter and make a decision.
 - (e) If no request for a hearing is made within the time and manner stated in the NCA, the department may take the action contemplated in the NCA. Such action shall be final.
- (5) Administrative hearing.
 - (a) All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all nondispositive motions.
 - (b) All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.
 - (i) Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.
 - (ii) Disciplinary action against a CNM license must not be based solely on hearsay evidence.
 - (c) The hearing officer may take testimony, examine witnesses and direct a continuance of any case.
 - (d) The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the department.
 - (e) The hearing officer shall issue a report and recommended finding to the department secretary.
 - (f) Decision of the department: the secretary of the department shall render a final administrative determination after reviewing the report and recommended findings issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA, placed in the CNM's licensure file. A copy of the written decision shall be mailed to the authority(ies) that license(s) the CNM as a registered nurse if the decision is to uphold the disciplinary action.

C. Reinstatement of a suspended or revoked license.

- (1) Individuals who request reinstatement of their license or who request that their probation be lifted or altered shall provide the department with substantial evidence to support their request. This evidence must be in the form of notarized written reports or sworn written testimony from individuals who have personal knowledge of the individual's activities and progress during the period of probation, suspension or revocation.
- (2) Requests for reinstatement of a revoked license shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date of the order of revocation or suspension is the controlling date, unless otherwise specified in the order.
- (3) Requests for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension.
- (4) Reinstatement of a suspended license requires proof of meeting the renewal requirements as set forth in this rule, any remedial education, supervised practice or other condition specified in the order for suspension required by the department and payment of the reinstatement of current or lapsed license fee.
- (5) Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of current or lapsed license fee.

[16.11.2.11 NMAC - Rp, 16 NMAC 11.2.11, 10/15/09]

16.11.2.12 ADVISORY BOARD: The department shall appoint a CNM advisory board to make recommendations to the department regarding the regulation of CNMs.

- A. The board may be comprised of:
 - (1) three New Mexico licensed CNMs, at least one of whom is actively practicing midwifery;
 - (2) one New Mexico licensed midwife who is actively practicing midwifery;
 - (3) two consumer members;
 - (4) one actively practicing board certified obstetrician-gynecologist physician; and
 - (5) one representative of the department.
- B. Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms. The department representative shall not be subject to term limits.
- C. The board shall meet a minimum of two times a year when called by the director of the division.
- D. The board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with department of finance administration rules.
- E. Any member failing to attend two consecutive board meetings without good cause and an excused absence prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.12 NMAC - Rp, 16 NMAC 11.2.10, 10/15/09]

16.11.2.13 SEVERABILITY: If any part or application of these rules is determined to be illegal, the remainder of these rules shall not be affected.

[16.11.2.13 NMAC - Rp, 16 NMAC 11.2.12, 10/15/09]

HISTORY OF 16.11.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

DPHW 67-24, Nurse Midwife Regulations For New Mexico, filed 12/12/67.

HSSD 76-2, Nurse Midwife Regulations For New Mexico, filed 1/20/76.

HED-80-6 (HSD), Regulations Governing the Practice of Certified Nurse Midwives, filed 10/17/80.

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives, filed 11/04/91.

History of Repealed Material:

16 NMAC 11.2, Certified Nurse Midwives (filed 10-18-96) repealed 10/15/09.

Other History:

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives (filed 11/04/91) was renumbered into first version of the New Mexico Administrative Code as 16 NMAC 11.2, Certified Nurse Midwives, effective 10/31/96.

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/96) was replaced by 16.11.2 NMAC Certified Nurse Midwives, effective 10/15/09.