

This rule was filed as 16 NMAC 11.3.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 11 MIDWIVES
PART 3 LICENSED MIDWIVES

16.11.3.1 ISSUING AGENCY: New Mexico Department of Health, Public Health Division, Maternal Health Program.
[10/31/96; Recompiled 12/31/01]

16.11.3.2 SCOPE: These regulations apply to any licensed midwife practicing in the state of New Mexico or licensed by the New Mexico department of health, public health division.
[10/31/96; Recompiled 12/31/01]

16.11.3.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the secretary of the department of health by authority of Section 9-7-6 (F) NMSA 1978, Section 24-1-3(V) NMSA 1978, and Section 24-1-21 NMSA 1978. The public health division (“division”) of the department of health shall administer and enforce these regulations.

16.11.3.4 DURATION: Permanent.
[10/31/96; Recompiled 12/31/01]

16.11.3.5 EFFECTIVE DATE: October 31, 1996, unless a later date is cited at the end of a section.
[10/31/96; Recompiled 12/31/01]

16.11.3.6 OBJECTIVE: The regulations establish policy, standards, and criteria relating to: the educational and examination requirements, issuing of permits and licenses, midwifery practice, and continuing education of persons who practice licensed midwifery.
[12/12/67...10/31/96; Recompiled 12/31/01]

16.11.3.7 DEFINITIONS:

A. “Apprentice midwife” means a person age 18 years or older, holding a high school diploma or a GED as minimum educational requirement who:

(1) wishes to make application for basic education in midwifery by apprenticeship in the state of New Mexico;

(2) has a formal preceptor relationship defined in writing with a midwifery instructor who is in good standing with the midwife licensing authority of the public health division and who meets the requirements of Subsection Q of 16.11.3.7 NMAC and agrees in writing to fulfill the basic educational and clinical experience requirements described in Subsections A and B of 16.11.3.12 NMAC.

B. “Board” means the licensed midwifery advisory board established under these regulations.

C. “Certified nurse-midwife (CNM)” means a graduate of a midwifery education program accredited by the accreditation commission for midwifery education (ACME) who, has been certified by the American midwifery certification board (AMCB) and licensed pursuant to laws, regulations, and procedures of the CNM’s jurisdiction

D. “Certified professional midwife (CPM)” means an independent practitioner who has met the standards for certification set by the north American registry of midwives (NARM). A CPM may not practice in New Mexico unless the CPM holds a New Mexico license to practice midwifery.

E. “Client” means a person who has entered into a professional relationship for midwifery services from a LM for the purpose of maintaining the client’s well-being. At minimum, this relationship is an interactive encounter between the LM and client as set forth in the “department of health practice guidelines for New Mexico licensed midwives”.

F. “Contact hour” means a unit of 50 to 60 minutes of a formal organized learning experience that directly relates to maternal, infant, and reproductive health and related professional, ethical, legal, or business topics and is approved by an accredited continuing education (CE) sponsoring organization

G. “Continuing education (CE)” means participation in a formal learning experience of which the CEs have been granted by an accrediting organization such as the midwifery education accreditation council

(MEAC), American college of obstetrics and gynecologist (ACOG), American college of nurse-midwives (ACNM), association of women's health, obstetric and neonatal nurses (AWHONN), American academy of family physicians (AAFP), State Health Departments, Nursing Associations, or Perinatal Associations.

H. “**Department**” means the department of health.

I. “**Division**” means the public health division of the department of health.

J. “**Formulary**” means a list of drugs approved by the department.

K. “**Incompetence**” is defined as follows: In performing midwifery functions, a midwife is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other midwives of the same licensure status and required by the generally accepted standards of the profession including those standards set forth in these regulations and their referenced documents. The failure to possess or to apply such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings.

L. “**License**” means a document issued by the department identifying a legal privilege and authorization to practice as a licensed midwife within the scope of this rule.

M. “**Licensed midwife (LM)**” means a person educated in the discipline of midwifery, who is licensed under this rule.

N. “**Licensed midwifery**” means the provision of health care and management of people in the antepartum, intrapartum, postpartum, and interconceptual periods, and infants up to 6 weeks of age. This care occurs within a health care system in a community setting which provides for midwifery protocols, medical consultation, co-management or referral and is in accord with the “standards and core competencies of practice for licensed midwives in New Mexico” and the “department of health practice guidelines for New Mexico licensed midwives”.

O. “**Licensing period**” usually means a 24-month period for which licenses are issued. Licenses may be issued at any time but shall expire on the last day of the licensee candidate’s birth month two years forward or on the last day of the month 24 months forward, whichever comes earliest.

P. “**MEAC**” means midwifery education accreditation council

Q. “**Midwifery instructor**” means:

(1) a person who is credentialed as a LM, certified professional midwife (CPM), certified nurse-midwife (CNM), or certified midwife (CM) and must be a licensed provider by a state or jurisdiction to provide midwifery care;

(2) has an additional two years of experience after credentialing or proof of 50 primary births beyond entry-level CPM requirements;

(3) has 10 continuity of care births beyond entry-level CPM requirements;

(4) has attended a minimum of 10 out-of-hospital births as primary midwife in the last two years;

(5) who has a formal training and supervisory relationship with an apprentice midwife that is documented in writing; and

(6) who is approved and listed with the division per division protocol

R. “**National practitioner data bank (NPDB)**” means the web-based repository of reports containing information on medical malpractice payments and adverse actions related to health care practitioners, providers, and suppliers.

S. “**NARM**” means the North American registry of midwives

T. “**New Mexico midwifery student workbook (student workbook)**” means an instrument used for the state apprenticeship process and approved by the division, in which the preceptor documents the successful completion of the student’s theoretical and clinical education and attainment of safe beginning practice of core competencies.

U. “**Peer review**” means the process utilized by licensed midwives to discuss client cases in a professional forum, which includes support, feedback, follow-up, and learning objectives according to NARM, the state professional organization(s), or other division recognized institutional criteria;

V. “**Permit**” means documentation issued by the department to a person meeting the requirements described in these regulations authorizing the practice of midwifery at the apprentice level described in 16.11.3.9 NMAC.

W. “**Permitting period**” means a three (3) year period for which permits are issued; permits may be renewed for an additional three (3) years.

X. “**Physician**” means a person who is currently practicing obstetrics with a specialty in obstetrics/gynecology or family medicine and is licensed and in good standing in their jurisdiction to practice medicine or osteopathy.

Y. “**Portfolio Evaluation Process (PEP)**” means is an educational evaluation process through NARM that includes verification of knowledge and skills by qualified preceptors. Completion of this process qualifies applicants to sit for the NARM skills and written examinations.

Z. “**Preceptor**” means the same as “midwifery instructor”

AA. “**Student midwife**” means a person age 18 years or older, holding a high school diploma or a GED as minimum educational requirement who:

(1) wishes to make application for basic education in midwifery through the NARM portfolio evaluation process (PEP) or through a U.S. department of education accredited midwifery school enrollment;

(2) has a formal preceptor relationship defined in writing with a midwifery instructor who is in good standing with the midwife licensing authority of the public health division and who meets the requirements of Subsection Q of 16.11.2.7 NMAC and agrees in writing to fulfill the basic educational and clinical experience requirements described in Subsections A and B of 16.11.3.12 NMAC.

BB. “**Supervision**” means the instruction, guidance, and continued evaluation of an apprentice or student midwife in the practice of midwifery by a midwifery instructor or preceptor with whom the apprentice has a formal relationship defined in writing and who retains ultimate responsibility for clients seen by apprentices. [Recompiled 12/31/01]

16.11.3.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:

A. “Department of health practice guidelines for New Mexico licensed midwives”

B. “Standards and core competencies of practice for licensed midwives in New Mexico”

16.11.3.9 PERMITS

A. General provisions:

(1) If caring for NM residents, an apprentice or student midwife must be on one of three pathways:

- (a) New Mexico state process
- (b) NARM’s portfolio evaluation process (PEP)
- (c) accredited midwifery school enrollment

(2) A permit or modified permit for an apprentice midwife or student midwife is required for any apprentice midwife or student midwife that will provide care for a New Mexico resident

(a) An apprentice midwife permit is required for those who are utilizing the New Mexico state process.

(b) A student midwife modified permit is required for those who are enrolled in a U.S. department of education accredited midwifery school or utilizing the NARM’s PEP.

(3) A permitted apprentice midwife or student midwife may provide any care or services allowed by these regulations as set out in Subsection A of 16.11.3.14 NMAC only under the direct supervision of a midwifery instructor. The midwifery instructor reviews and evaluates all care provided by and attends every labor and delivery managed by the apprentice. The midwifery instructor retains the responsibility for clients seen by apprentice midwives and student midwives.

(4) The division requires full disclosure of any past professional licensure, suspensions, and revocations which will be considered before granting any permit.

B. Apprentice midwife permits:

(1) Application for apprentice midwife permit must include all of the following:

- (a) proof of high school diploma or GED or higher educational attainment;
- (b) a completed agreement by the midwifery instructor to the preceptor relationship on the division’s form;
- (c) a completed apprentice application on the electronic division form;
- (d) the fee designated in Subsection D of 16.11.3.9 NMAC

(2) Upon submission of a complete permit application, the division will supply to qualifying apprentice midwife applicants an apprentice midwife permit and necessary regulatory information applicable to apprenticeship:

(a) an apprentice midwife permit;

(b) the student workbook;

(c) a copy of the “department of health practice guidelines for New Mexico licensed midwives”;

(d) a copy of the “standards and core competencies of practice for licensed midwives in New Mexico”; and

- (e) a copy of Licensed Midwives regulations, 16.11.3 NMAC.
- (3) A midwife apprentice must have successfully completed basic education requirements in midwifery and the requisite examination process, set forth in 16.11.3.12 NMAC, no sooner than the end of the second year but no later than the end of the sixth year after the initial apprentice permit is issued. Extensions beyond this period may be considered by the division on a case-by-case basis.
 - (a) Before receiving an endorsement from the division to take the division-approved written national examination for certification, an apprentice must successfully complete the following:
 - (i) a minimum of 24 months of theoretical and clinical education described in 16.11.3.12 NMAC; and
 - (ii) a completed student workbook submitted to the division;
 - (b) Upon passing of the division-approved written national examination for certification, the apprentice will be eligible for state licensure set forth in paragraph 1 of subsection B of 16.11.3.10 NMAC.
 - (4) Renewal of permits: An apprentice midwifery permit may be renewed once after the initial three years permit period. An apprentice applicant for renewal shall submit to the department:
 - (a) a completed renewal application on the division's electronic form;
 - (b) the renewal fee designated in Subsection D of 16.11.3.9 NMAC
 - (5) Lapse in permitted period: If there is a lapse greater than six months between first and second permitted period as defined in section X of 16.11.3.7 NMAC, an apprentice will need to restart the apprentice process.
 - (6) The division may revoke the permit at any time upon a finding of any act of incompetence or unprofessional conduct as defined in 16.11.3.11 NMAC.
- (C) Student midwife modified permit:
 - (1) Application for student midwife modified permit must include all of the following:
 - (a) proof of registration in a U.S department of education accredited midwifery school or proof of registration in the NARM's PEP;
 - (b) a completed agreement by any New Mexico approved midwifery instructor to the preceptor relationship on the division's form;
 - (c) a completed student midwife registration application on the electronic division form;
 - (d) the fee designated in Subsection D of 16.11.3.9 NMAC
 - (2) Upon proof of successful completion, the division will supply to qualifying student midwife applicants a student midwife modified permit.
 - (3) A student midwife modified permit is valid for three years.
 - (4) Renewal of modified permit: A student midwife modified permit may be renewed after the initial permitting period. A student midwife applicant for renewal shall submit to the department:
 - (a) a completed renewal application on the division's ELECTONIC form;
 - (b) the fee designated in Subsection D of 16.11.3.9 NMAC
- (D) Fees: All fees are non-refundable and shall be made by payment method designated by the department.
 - (1) Applications for initial midwife apprenticeship permit must be accompanied by payment to the division in the amount of sixty dollars (\$60).
 - (2) Application for renewal of midwife apprentice permit shall be accompanied by a payment of sixty dollars (\$60).
 - (3) Applications for student midwife modified permit must be accompanied by payment to the division in the amount of thirty dollars (\$30).
 - (4) Application for renewal of a student midwife modified permit shall be accompanied by a payment of thirty dollars (\$30).
 - (5) The late fee for renewing an apprentice permit or student midwife modified permit when the complete application is not electronically submitted by the fifth calendar day of the month of the current permit or modified permit's expiration date or for voluntary lapse of a permit or modified permit will incur an additional fee of \$25; this fee is in addition to the renewal fee.

16.11.3.10 LICENSURE:
A. General provisions:

(1) A licensed midwife may provide any care or services allowed by these regulations.

(2) The division requires full disclosure of past midwifery or other professional licensure, suspensions, and revocations which will be considered before granting any license. The department may deny licensure, including renewal, reactivation, or reinstatement of licensure, to a LM whose midwifery or other license has been subject to disciplinary action in any jurisdiction. If denied, re-application will only be considered after a minimum of six months from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions.

(3) Practicing midwifery in New Mexico for compensation or using the initials LM after one's name without a current New Mexico midwifery license is grounds for disciplinary action.

B. Initial licensure:

(1) An applicant for midwifery licensure must submit to the division the following:

(a) if a new applicant for midwifery licensure:

(i) evidence of a passing score on the division-approved national examination no more than one year before applying for licensure or proof of CPM certification; and

(ii) evidence of a passing score on the division-approved jurisprudence examination;

(b) if a new applicant for midwifery licensure who is already practicing midwifery

in another state:

(i) proof of CPM certification; and

(ii) evidence of a passing score on the division-approved jurisprudence examination;

(c) evidence of:

(i) current certification in cardiopulmonary resuscitation of the adult and infant/child by the American Heart Association, the Red Cross, the American Safety and Health Institute (ASHI) Basic Life Support, or pre-approved by the department, that includes a hands-on skills component;

(ii) competency in IV therapy via certification course that includes a hands-on skills component; and

(iii) current certification in neonatal resuscitation program of the American academy of pediatrics, the Canadian Paediatric Society, or pre-approved by the department, that includes a hands-on skills component;

(d) a complete application on the division's electronic forms which shall include the applicant's licensing and disciplinary history;

(e) the fee designated in Subsection G 16.11.3.10 NMAC.

(2) An initial LM license may be issued at any time upon submission and verification of the materials required in Paragraph 1 of Subsection B 16.11.3.10 NMAC and shall expire on the last day of the month of the LM's birth date. A LM license shall be valid for a maximum of two years.

(3) After reviewing and approving the submitted application, the division shall issue to qualifying applicants a license.

(4) If a license is denied on initial application, the applicant may reapply after six months and upon meeting all the requirements under Subsection B of 16.11.2.10 NMAC.

(5) Any final action denying a license to an applicant is an event reportable to the NPDB.

C. Renewal of licensure: A LM license shall expire on the last day of the month of the LM's birth month of the second year after it is issued. A completed renewal application must be received by the division by the fifth day of the month of expiration of the current license. An applicant for renewal shall submit to the division:

(1) a completed renewal application on the division's electronic form;

(2) evidence of successful completion of thirty (30) contact hours of continuing education that conforms with the definitions of "contact hour" and of "continuing education" in topics focused on midwifery care, reproductive health, or the evaluation and care of the newborn. CEUs taught by midwifery associations or non-accredited educational programs will not count unless accredited as CEUs by a third party.

(a) A minimum of 2 (two) of the 30 contact hours should be pharmacology related with emphasis on the division-approved drug formulary.

(b) The following options, subject to audit and approval by the division, may be accepted in place of continuing education contact hours, except for the pharmacology-related contact hours requirement:

(i) preparation and presentation of a midwifery topic that has received contact hour approval by an accredited CE sponsoring agency, will count for twice the number of contact hours for which the presentation is approved with a maximum award of 15 contact hours per licensure period; the same presentation cannot be credited more than once;

(ii) sole or primary authorship of one midwifery related article published in a department-approved professional medical or midwifery journal may be accepted in place of 10 contact hours per licensure period;

(iii) completion of a formal university or college course directly related to midwifery or clinical practice; each university or college unit shall be credited as 15 hours of continuing education; and

(iv) acting as primary preceptor for a midwifery student; each 10 hours of precepting shall be credited as one continuing education hour, and up to 5 contact hours will be allowed per student, with a maximum award of 10 contact hours; verification shall be provided on division-approved form.

(3) an annual report of homebirth data in a format as directed by the division

(4) evidence of current certification that includes a hands-on component in cardiopulmonary resuscitation of the adult, infant/child, current recognition by the neonatal resuscitation program of the American academy of pediatrics, and current competency in IV therapy via certification course as outlined in Paragraph 1(c) of Subsection B of 16.11.3.10 NMAC;

(5) evidence of peer review participation within the two (2) years preceding application

(6) renewal payment designated in Subsection G 16.11.3.10 NMAC.

D. Reactivation of a LM license

(1) A lapsed license occurs on the first day of the following month following the expiration date of the current license if license not renewed on time, and a LM must reinstate the license, paying all added fees before being allowed to practice. A LM may not work with a lapsed license or disciplinary action will be taken.

(2) The requirements for reactivation of a LM license that has voluntarily lapsed in status or for an applicant that is returning to New Mexico are the same as those for license renewal, listed in Subsection C of 16.11.2.10 NMAC, except the applicant must pay the additional fee for reactivation pursuant to Subsection G of 16.12.2.10 NMAC.

(3) The license will be reactivated with the original license number.

E. Reinstatement of a LM license:

(1) The requirements for reinstatement of a revoked or suspended LM license are the same as those for license renewal, listed in Subsection C of 16.11.2.10 NMAC, except that the fee is higher than a renewal, as designated in Subsection G of 16.11.2.10 NMAC.

(2) The license will be reinstated with the original license number.

F. Reciprocity: There is no reciprocity with other jurisdictions.

G. Fees: All fees are non-refundable and shall be made by the method designated by the division.

(1) Applications for initial licensure shall be accompanied by payment to the division in the amount of one-hundred dollars (\$100).

(2) Application for renewal of licenses shall be accompanied by a payment of fifty dollars (\$50).

(3) The late fee for renewing a license when the complete application is not electronically submitted by the fifth calendar day of the month of the current license's expiration date or for voluntary lapse of a license will incur an additional fee of seventy-five dollars (\$75); this fee is in addition to the renewal fee.

(4) Reinstatement of a revoked or suspended license or reactivation of a lapsed license will incur an additional fee of one-hundred dollars (\$100); this fee is in addition to the renewal fee.

(5) Application for examination shall be accompanied by the fee designated by the division. This amount does not include the licensing fee.

(6) Hard copy of a license certificate (8 ½ x 11" size) can be requested for a fee of thirty dollars (\$30).

(7) Verification of license by FAX or letter can be requested for a fee of twenty-five dollars (\$25).

[2/5/80...10/31/96; 12/31/97; Recompiled 12/31/01]

16.11.3.11 DISCIPLINARY ACTION:

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. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

(2) Unprofessional conduct. For purposes of these regulations “unprofessional conduct” includes, but is not limited to, the following:

(a) dissemination of a patient’s/client’s health information and/or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law and/or hospital/agency policy from disclosure;

(b) falsifying or altering patient/client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(c) misappropriation of money, drugs or property;

(d) obtaining or attempting to obtain any fee for patient/client services for one’s self or for another through fraud, misrepresentation, or deceit;

(e) aiding, abetting, assisting or hiring an individual to violate any duly promulgated regulation of the departments midwife licensing authority;

(f) obtaining, possessing, administering or furnishing prescription drugs not on the department formulary listed in the “department of health practice guidelines for New Mexico licensed midwives” to any person, including but not limited to one’s self;

(g) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of midwifery;

(h) obtaining or attempting to obtain a license to practice midwifery through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process;

(i) practicing midwifery in New Mexico without a valid, current New Mexico license, permit, or modified permit or aiding, abetting or assisting another to practice midwifery without a valid, current New Mexico license;

(j) intentionally engaging in sexual contact with and/or toward a patient/client in a manner that is commonly recognized as outside the scope of the individual midwife’s practice;

(k) failure to care for a non-adherent client(s) as required in the “department of health practice guidelines for New Mexico licensed midwives” when the failure to care results or may result in potential or actual harm or danger to the patient(s)/client(s);

(l) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

(m) practice which is beyond the scope of LM licensure;

(n) delegation of medication administration, assessment, evaluation and judgment to non-licensed persons, or non-permitted apprentices;

(o) verbally or physically abusing a client;

(p) failure to meet the documentation requirements of the bureau of vital records and health statistics regulations;

(q) violation of the departments regulations governing the practice of licensed midwifery;

(r) failure to provide the division in a timely manner with requested information.

(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 pursuant to 28-2-4(A)(1) NMSA.

(6) Conviction, or entered into an agreed disposition, of a misdemeanor offense related to the practice of midwifery as determined on a case-by-case basis.

(7) Failure to report in writing to the division any complaint or claim made against the LM's practice as a registered, certified, or licensed health care provider in any jurisdiction. Such notification shall include the credentialing jurisdiction and the location, time, and content of the complaint or claim. It shall be made within 20 business days of the LM becoming aware of the complaint or claim.

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

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

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

B. Non-disciplinary proceedings: For non-disciplinary actions involving denial of renewal of a license the applicant will be provided a notice of contemplated action and the right to the hearing or request for settlement procedures set forth in Paragraphs 3 and 4 of Subsection C of 16.11.3.11 NMAC.

C. Disciplinary proceedings: Disciplinary proceedings are conducted in accordance with the Uniform Licensing Act (ULA), 61-1-1 et seq., NMSA 1978 and Open Meetings Act 10-15-1 et seq., 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 an 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 division's midwifery advisory board.

(2) Investigation of a complaint:

(a) All complaints alleging a violation of the regulations adopted by the public health division will be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The complainant will receive from the division a notification of receipt of the complaint.

(c) The investigation may result in a notice of contemplated action (NCA), per the ULA, being issued by the division if a violation exists; or a dismissal of the complaint because no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

(d) The department will notify the complainant of conclusion of the investigation and provide information as to public notification of any disciplinary action that has been taken as set forth in Subsection D of 16.11.3.11 NMAC.

(3) Notice of contemplated action.

(a) The NCA shall be drafted by the department.

(b) The director of the division, or the director's 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, as set forth in ULA at section 61-1-3 NMSA, before the department has authority to take any action that would result in disciplinary action.

(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) The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative prosecuting attorney at any time prior to the hearing.

(i) If a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval.

(ii) The proposed stipulation and agreement does not divest the department of the authority to require a formal hearing or final approval, amendment, or rejection.

(iii) If a settlement is not reached, a hearing shall be held.

(d) Once a hearing has been scheduled, any requests for a continuance must be presented to the division's hearing officer, in writing, at least ten (10) days prior to the scheduled hearing. The hearing officer may approve or deny the request.

(e) If a person fails to appear after requesting a hearing, the department may proceed to consider the matter as a default and make a decision.

(f) If no request for a hearing is made within the time and manner required by the ULA, the division may take the action contemplated in the NCA. Such action shall be final and reportable to NPDB.

(g) The department shall keep a record of the number of complaints received and the disposition of said complaints as either substantiated or unsubstantiated in accordance with 1.21.2 et al NMAC, Retention and Disposition of Public Records.

(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 non-dispositive 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 LM 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 division's licensing authority.

(e) The hearing officer shall issue a report and recommended finding to the department secretary in accordance with the ULA.

(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, Section 61-1-14 (NMSA 1978), and placed in the LM's licensure file. The department shall mail a copy of the written decision to any authority(ies) that license(s) the LM as a healthcare provider and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

D. Public notification of disciplinary action: The following are means in which disciplinary actions are made available to the public.

(1) Information regarding disciplinary actions shall be entered into the license file or applicant's file.

(2) Submission of disciplinary action to any appropriate disciplinary data bank and/or notification to each state in which the licensee holds a license or has been licensed.

E. Reinstatement of license:

(1) Individuals who request reinstatement of their license or who request that their probation be lifted must be prepared to provide the division 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 licensee's activities and progress during the period of probation, suspension or revocation.

(2) Requests for reinstatement of a revoked license for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date at which time the secretary of the department's signature is affixed to 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 revoked or suspended license requires proof of meeting the renewal requirements as set forth in these regulations, any remedial education or supervised practice required by division, and payment of the reinstatement of a revoked license fee as set forth in Subsection G of 16.11.3.10 NMAC.

(5) When a license is revoked solely because the licensee is not in compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978, the license shall be reinstated upon presentation of a subsequent statement of compliance.

[10/31/96; Recompiled 12/31/01]

16.11.3.12 COURSE OF EDUCATION: New Mexico retains a state apprentice process to become a midwife; the division will provide a division-approved student workbook as a tool in determining the acceptability of an applicant's educational experience. The main purpose of the education program is to establish entry-level knowledge, skills, and abilities necessary to practice competently; this is established through training, education and supervised clinical experience, followed by successful completion of a division-approved written examination. The midwifery instructor will use the student workbook to conduct the course of education for the apprentice as set out below.

A. Theoretical instruction: Theoretical instruction must include, but is not limited to, these areas of study:

(1) Human life science: Anatomy and physiology, pathophysiology, fetal development, genetic screening, applied microbiology;

(2) Psycho/social issues: Communication and counseling, cultural concerns, human sexuality, perinatal education;

(3) Antepartum management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, nutrition, diagnostic laboratory tests and procedures, and consultation and transfer;

(4) Intrapartum management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, diagnostic laboratory tests and procedures, consultation and transfer, and adult cardiopulmonary resuscitation;

(5) Postpartum management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, consultation and transfer, diagnostic laboratory tests and procedures, and family planning;

(6) Newborn management: History taking, physical assessment, risk screening, provision of care, normal course, complications, diagnostic laboratory tests and procedures, consultation and transfer, and neonatal resuscitation;

(7) Reproductive health care: History taking, physical assessment, risk screening, provision of care, diagnostic laboratory tests and procedures, non-pharmalogical treatment, consultation or transfer for treatment, and family planning;

(8) Professional issues: History of midwifery, division regulations regarding prevention of infant blindness; newborn screening for certain congenital diseases and other inborn metabolic errors; registration of births, neonatal and maternal deaths, including stillbirths, and control of diseases and conditions of public health significance; ethics, laws and regulations, starting a small business.

(9) Pharmacological management: Safely procure, carry, and administer medications, per the Drug and Cosmetic Act (Definition K), listed on the department formulary.

B. Clinical experience: Permitted apprentice midwives should refer to the division's student workbook for details on clinical experiences and skills required to complete training including but not limited to:

(1) Skills and Knowledge:

(a) Professional Issues, Knowledge, and Skills

(b) General Healthcare Skills

(c) Maternal Health Assessment

(d) Prenatal Care

(e) Labor, Birth, and Immediate Postpartum

(f) Postpartum

(g) Well-Baby Care

(2) Clinical Experiences:

(a) Births as an Observer

(b) Births as an Assistant Under Supervision

(c) Prenatal Exams as an Assistant Under Supervision

- (d) Newborn Exams as an Assistant Under Supervision
- (e) Postpartum Exams as an Assistant Under Supervision
- (f) Birth as a Primary Under Supervision
- (g) Initial Prenatal Exams as a Primary Under Supervision
- (h) Prenatal Exams as a Primary Under Supervision
- (i) Newborn Exams as a Primary Under Supervision
- (j) Postpartum Exams as a Primary Under Supervision
- (k) Continuity of Care

[2/5/80...10/31/96; 12/31/97; Recompiled 12/31/01]

16.11.3.13 EXAMINATION: The division will administer a state jurisprudence examination for licensure of midwives at least quarterly. This examination must be taken by all applicants applying for licensure in New Mexico. Proof of passing NARM exam within one year or current CPM certification is required to sit for this examination.

A. A candidate for examination who receives a failing score shall be eligible to retake the examination by meeting the following requirements:

1. If an applicant fails the examination, the applicant must wait a period of three months from examination date before retaking the examination, and must take the examination again within six months after the three month waiting period.

2. Submitting the examination fee for each examination as outlined in Subsection G of 16.11.3.10 NMAC.

B. If an applicant fails the examination more than three times, further application for the examination will be at the discretion of the department.

[3/19/87...10/31/96; 12/31/97; Recompiled 12/31/01]

16.11.3.14 RESPONSIBILITIES AND SCOPE OF PRACTICE:

A. Scope of practice: The licensed midwife may independently manage health care services related to the antepartum, intrapartum, and postpartum period for people without general health or obstetrical complications. The LM may provide normal newborn care for up to six weeks of age. The LM may provide non-pharmacological family planning and routine reproductive health care with training and experience. A LM will consult, collaborate, or refer to other health professionals for patient care issues outside of their area of competency. LMs have authority to purchase and use specific drugs and medications as outlined in the department-approved formulary as set forth in “department of health practice guidelines for New Mexico licensed midwives”. A LM practices in accordance with the “department of health practice guidelines for New Mexico licensed midwives” and the “standards and core competencies of practice for licensed midwives in New Mexico”.

B. Responsibility to consult: It shall be the responsibility of the midwife to develop a means for consultation with or referral/transfer to a physician, certified nurse-midwife (CNM), or hospital if there are significant deviations from the normal in the health status of either birthing persons or newborns as set out in the “department of health practice guidelines for New Mexico licensed midwives”.

C. Informed consent: If the LM is providing birth care, the LM must obtain written, informed consent regarding the care to be provided by the licensed midwife from the client upon accepting the client into care. The signed informed consent form must be filed in the client’s record, and a copy must be provided to the client. Informed consent shall be a written statement signed by the licensee and the client, in which the licensee certifies that full disclosure of the following information, at a minimum, has been made and acknowledged by the client:

- (1) The LM’s educational background and credentials;
- (2) Whether the LM has professional liability insurance coverage;
- (3) A description of the procedures, benefits, and risks of community setting births;
- (4) The nature and scope of the care to be given;
- (5) The nature and terms of the financial agreement;
- (6) The plan for consultation and for non-emergent and emergent transfer and transport of client or newborn; and
- (7) Information regarding where complaints may be filed.

D. The licensed midwife may not accept a client for care who does not meet the minimum criteria set out in the “department of health practice guidelines for New Mexico licensed midwives”.

E. Birth registration: The licensed midwife must complete a New Mexico certificate of live birth registration and file it with the bureau of vital records and health statistics of the department of health within ten (10)

days of the birth of any child in the state of New Mexico. No licensed midwife shall register nor enable any other party to register as a New Mexico birth any child not born in the state. Failure to meet the vital records regulations shall be grounds for disciplinary action.

F. Records: The licensed midwife will document and maintain clients' records according to current "department of health practice guidelines for New Mexico". Inactive records shall be maintained no less than 25 years.

G. Mortality reporting: The licensed midwife must report within 48 hours to the division any neonatal or maternal mortality, including stillbirths, in clients for whom the LM has cared for in the perinatal period.

H. Reportable diseases: The licensed midwife must report any reportable contagious disease to the public health officer pursuant to the Public Health Act, 24-1-15.

I. The licensed midwife shall participate in peer review at least once every two (2) years in accordance with the requirements of the division.

J. Annual reports: At time of license renewal, each licensed midwife shall submit a report on a division-approved form of the disposition of each client the LM has given care to for the previous 24 months. Note that this annual reporting does not preclude the immediate reporting of maternal or neonatal mortality or stillborn cases.

K. Changes of contact information: A licensed midwife must report a change of name, address, phone number, email, or other contact information within 30 days of the change.

L. Other rules: a LM 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; and
- (5) "requirement for freestanding birth centers," 7.10.2 NMAC.

M. Guidelines: In the absence of specific direction in these regulations as to standard of practice or ethics, the "standards and core competencies of practice for licensed midwives in New Mexico" and the "department of health practice guidelines for New Mexico licensed midwives" approved by the division, which contains the procedures and policies of the department of health and division which are adopted as standards of practice and are incorporated by reference herein.

[2/5/80...10/3/186; 12/31/97; Recompiled 12/31/01]

16.11.3.15 ADVISORY BOARD: The division shall appoint a licensed midwifery advisory board to make recommendations to the department regarding the regulation of LMs.

A. The board's activities will be:

- (1) review complaints and mortalities, set forth in Subsection H of 16.11.3.14 NMAC, involving LMs as requested by the division and make recommendations to the division;
- (2) remain current in clinical practice and professional issues and advise the division accordingly;
- (3) recommend updates in the "department of health practice guidelines for New Mexico licensed midwives" and the "standards and core competencies of practice for licensed midwives in New Mexico";
- (4) conduct other relevant business as requested by the division.

B. Advisory board membership: The licensed midwifery advisory board shall be composed of nine (9) members; the membership shall be as follows:

- (1) three (3) state licensed midwives, at least two of whom shall be actively practicing;
- (2) one (1) state licensed certified nurse-midwife actively practicing midwifery;
- (3) three (3) members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;
- (4) one (1) state licensed physician actively practicing obstetrics; and
- (5) one (1) employee of the division

C. 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.

D. The board shall meet a minimum of two times a year when a meeting of the board is called by the director of the division.

E. Board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with the Per Diem and Mileage Act, Section 10-8-1 to -8 NMSA 1978 department of finance administration rules, Section 2.42.2 NMAC.

F. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be considered for removal from the board.
[16.11.2.12 NMAC - Rp, 16.11.2.12 NMAC, 6/25/2019]

[2/5/80...10/31/96; Recompiled 12/31/01]

16.11.3.16 SEVERABILITY: If any part or application of the Regulations Governing the Practice of Licensed Midwifery is held invalid, the remainder or its application to other situations or persons shall not be affected.

[7/12/93...10/31/96; Recompiled 12/31/01]

HISTORY OF 16.11.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

HED-80-3 (HSD), Regulations Governing the Practice of Lay Midwifery, filed 2/5/80.

HED-80-3A (HSD), Regulations Governing the Practice of Lay Midwifery, filed 3/12/80.

HED-82-1 (HSD), Regulations Governing the Practice of Lay Midwifery, filed 1/19/82.

HED-87-1 (HSD), Regulations Governing the Practice of Lay Midwifery, filed 3/19/87.

HED 89-10 (PHD), Regulations Governing the Practice of Lay Midwifery, filed 11/16/89.

HED-93-9 (PHD), Regulations Governing the Practice of Lay Midwifery, filed 7/12/93.

History of Repealed Material: [RESERVED]