

## NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 16.11.3 NMAC, "Licensed Midwives". The public hearing will be held on November 4, 2021, at 9:30 a.m. via Cisco WebEx online, via telephone, and comments will be received via email through the conclusion of the hearing.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding Coronavirus and in consideration of Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.

The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the current rule, 16.11.3 NMAC, concerning the licensing, scope of practice, and disciplining of licensed midwives. The proposed replacement rule is intended to provide greater clarity in existing regulatory and statutory requirements, to ensure continued high levels of professionalism among licensees, and to address recent statutory changes to revisions to the NM Criminal Offender Employment Act, Section 28-2-4 NMSA 1978.

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, and Subsections S and V of Section 24-1-3 NMSA 1978.

Purpose of changes are listed below:

### 16.11.3.3 - Statutory Authority:

- To revise the section to reflect the statutory authority for the regulations.

### 16.11.3.6 - Definitions:

- The purpose of the changes is to clarify existing definitions to ensure clarity and better understanding by licensed midwives of terms used throughout the regulation.
- The purpose of the changes is to add the definitions of "client", "formulary", "national practitioner data bank", "permitting period", "portfolio evaluation process", and "student midwife" with the purpose of providing a detailed description to the licensed midwife of the processes within the regulation that will impact the licensee through the license process and in their daily professional work.
- The purpose is to expand on the definition of "contact hour" and "continuing education" in order to provide greater understanding to licensed midwives of sources for their required education credits.

### 16.11.3.8 - Documents Incorporated by Reference are the Latest Editions of:

- The purpose is to provide licensed midwives with references to the current guidelines, standards and core competencies to which they are required to practice pursuant to this regulation.

### 16.11.3.9 - Permits:

- The purpose of the changes is to set forth the clear distinction of procedural requirements for one of three processes for an apprentice or student midwife to care for New Mexico residents, to obtain renewal of permits and the process by which student midwives may obtain modified permits.

### 16.11.3.10 - Licensure:

- The purpose of the revisions to this section is to provide a more detailed explanation of the process of obtaining licensure, and renewal, reactivation and reinstatement processes in order to ensure better understanding of the process by applicants and current licensees, and to provide a detailed explanation of the contact hours for continuing education required for renewal of a license. Section C of 16.11.3.10 NMAC revises the license renewal schedule for the two-year term of licensure. Section G of 16.11.3.10 NMAC has changed the fees section to reflect a slightly higher initial fee and a penalty for late renewals.

### 16.11.3.11 - Disciplinary Action:

- In general, the purpose of the changes to Section A of 16.11.3.11 NMAC is to amend, clarify, and reorganize certain existing grounds for disciplinary action to ensure that complaints against licensees are evaluated and adjudicated in a fair and impartial manner that complies with due process while continuing to give the public confidence in this licensed profession. One such change has been made to the existing ground for disciplinary action for "obtaining, possessing, administering, or furnishing prescription drugs" to clarify where the applicable formulary may be located, to add that practicing midwifery without a valid "modified permit" may be grounds for disciplinary action, to add as grounds for disciplinary action the failure to care for a non-adherent client as required by department of health practice guidelines for New Mexico Licensed Midwives, and to add that verbally or physically abusing a client may be a ground for disciplinary action. Additionally, the rule adds new language governing consideration of criminal convictions in disciplinary actions, to comply with statutory changes to Section 28-2-4 NMSA 1978, has added conviction for misdemeanor offenses related to the practice of midwifery as grounds for disciplinary action, and added failure to report in writing to the division any complaint or claim made against the licensed midwife's practice in any jurisdiction in which they practice as a registered, certified or licensed health care provider. The purpose of adding a new Section B of 16.11.3.11 NMAC Non-Disciplinary proceedings is to provide a hearing opportunity for non-disciplinary license proceedings. The purpose of Section C of 16.11.3.11 NMAC Disciplinary proceedings changes are to provide additional information to the licensee of the notifications to be expected in the disciplinary process, to provide clarity on the hearing procedure to be followed under the Uniform Licensing Act, to advise the public and licensees of the regulation under which the department will keep a record of the number of complaints received and their disposition, to specify that any hearing is to be conducted by a hearing officer designated by the secretary, to provide clarity that a decision on any disciplinary proceeding will be final when the secretary renders a final administrative determination, to make it clear that final administrative decisions are reported to the National Practitioner Data Bank (NPDB), and to allow for reinstatement of a license revoked for non-compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978 upon presentation of a subsequent statement of compliance.

#### 16.11.3.12 - Course of Education:

- The purpose of changes made to the section are to clarify for the license applicant what entry level skills, knowledge, and abilities are necessary to practice competently and to set forth with specificity the skills, knowledge, and clinical experiences needed.

#### 16.11.3.13 - Examination:

- The purpose of the changes made to this section are to shorten the time to retake an examination after initial failure of the exam and increase the number of times per year that the division will administer the licensure examination. This will provide greater opportunity for an increased number of licensed midwives in the state and thereby increase their numbers in New Mexico to afford better healthcare to residents.

#### 16.11.3.14 - Responsibilities and Scope of Practice:

- The purpose of the changes to Section A of 16.11.3.14 NMAC is to provide the licensed midwife with a more definitive scope of practice in a gender neutral manner, by providing for the healthcare of people without general health or obstetrical complications; to clarify the time for newborn care is up to six weeks of age; to provide that a licensed midwife may provide non-pharmacological family planning and routine reproductive health care with training and experience, to set out that the licensed midwife may purchase and use specific drugs and medications as outlined in the department-approved formulary set out in the department's practice guidelines for licensed midwives in New Mexico. The purpose of the changes to Section B of 16.11.3.14 NMAC is to increase the type of licensed professionals with whom consultation may be made to include certified nurse-midwives. The purpose of the changes to Section C of 16.11.3.14 NMAC is to provide clarity on what content an informed consent should contain and the responsibility to maintain a copy in the client records. The purpose of changes to Section D of 16.11.3.14 NMAC would change the terminology of the admission criteria section to the gender-neutral term "client". The purpose of changes to Section G of 16.11.3.14 NMAC is to add "stillbirths" as a reportable neonatal or maternal mortality reportable incident for a client for whom the licensed midwife has care for in the perinatal period. The purpose of changes to Section J of 16.11.3.14 NMAC are to change reporting from quarterly to annual reporting. The purpose of changes to Section K of 16.11.3.14 NMAC would set new informational obligations on licensees such as maintaining the current and accurate contact information on file with the department.

#### 16.11.3.15 - Advisory Board:

- The purpose of the changes to Section A of 16.11.3.15 NMAC are to clarify the definition of the general public member and to allow the Board to recommend changes to the department’s practice guidelines for New Mexico Licensed Midwives. The purpose of the changes to Section B of 16.11.3.15 NMAC are to increase the number of members of the general public to allow for better representation on the board by the residents who are served by the licensees.

Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-844-992-4726. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the “Join” button; click the “Join a meeting” button; enter the following meeting number and password where indicated on screen—Meeting number (access code): 2488 186 6556 #, Meeting password: vPWsJwAy728; click the “OK” button. You may also provide comment via Chat during the live streaming.

Written public comment regarding the proposed rule amendments can be submitted by either mailing the comment to the following address:

Abigail Reese  
Maternal Health Program Manager  
Family Health Bureau/Public Health Division  
2040 S. Pacheco (Colgate Building)  
Santa Fe, New Mexico 87505  
(505) 476-8866

Or preferably by e-mailing the comment to the e-mail address: [Abigail.Reese@state.nm.us](mailto:Abigail.Reese@state.nm.us).

Written comments must be received by the close of the public rule hearing on November 4, 2021. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within three (3) days of receipt, and will be available at the New Mexico Department of Health Public Health Division for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

The foregoing are summaries of the proposed rule. The proposed rule includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department’s website at <https://nmhealth.org/publication/regulation/>