

NMAC

Transmittal Form



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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renummer (ALD Use Only) Most recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):
Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

This rule making by the Secretary of the Department of Health is made in accordance with the following authorities: Sections 9-7-6 (E), 24-1-3 (S) and (V) 24-1-4.1 NMSA 1978.

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

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Findings required for rulemaking adoption:

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Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

The findings in support of this repeal and replacement rule are as stated in the attached Statement of Reasons for Adoption of the rule, which is hereby incorporated by reference.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Chris D. Woodward

Check if authority has been delegated

Title:

Acting General Counsel

Signature: (BLACK ink only)

Date signed:

Christopher Woodward

Digitally signed by Christopher Woodward
Date: 2024.04.25 09:01:10 -06'00'

04/25/2024

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STATE OF NEW MEXICO 2024 APR 25 PM 12: 02
BEFORE THE SECRETARY OF HEALTH

**IN THE MATTER OF THE PROPOSED
REPEAL AND REPLACEMENT OF
16.11.2 NMAC, CERTIFIED NURSE-MIDWIVES**

**STATEMENT OF REASONS
FOR ADOPTION OF REPEAL AND REPLACEMENT OF RULE**

The Cabinet Secretary for the New Mexico Department of Health (“Department”), Patrick M. Allen, following a public hearing conducted on February 20, 2024, on the proposed repeal and replacement of 16.11.2 NMAC, Certified Nurse-Midwives, hereby adopts the proposed rule as revised after the hearing in response to public comment. This decision is based on the entire record in this matter, which includes a recording of the hearing, written public comments, and the Report and Recommendation of Hearing Officer, Jared D. Najjar, Esq. dated March 19, 2024.

The Cabinet Secretary has familiarized himself with the rulemaking record, and finds as follows:

1. The Department of Health is authorized to promulgate rules as may be necessary to carry out the duties of the Department and its divisions. NMSA 1978, Section 9-7-6 (E).
2. In accordance with NMSA 1978, Section 9-7-6 (E) and other state law, notice of the public hearing for the proposed rule was published in the Albuquerque Journal newspaper on January 16, 2024, and notice was published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on January 16, 2024.
3. In accordance with NMSA 1978, Section 14-4-5.2, prior to the date of the rule hearing, notice of the public hearing for the proposed rule was also posted to the agency website at <https://www.nmhealth.org/about/asd/cmo/rules/> as well as to the New Mexico Sunshine Portal



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<http://www.newmexico.gov>. The proposed rule was also posted at the Department of Health's central office, the Harold Runnels Building, and at the Public Health Division, Family Health Bureau, Maternal Health Program's primary office.

4. By a letter dated January 17, 2024, the Cabinet Secretary designated Mr. Jared D. Najjar, Esq. to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed rule.

5. A public rule hearing concerning the proposed rule was held via the Microsoft Teams online video conferencing platform on February 20, 2024.

6. Members of the public were afforded an opportunity to comment on the proposed rule at the hearing and in writing prior to the hearing and until 5:00 p.m. on the date of the public hearing pursuant to authority identified at NMSA 1978, Section 9-7-6 (E).

7. No oral comments were received; however, written comments from members of the public and the Board of Nursing were received, and those comments are described in the report of the Hearing Officer issued on March 19, 2024.

8. In an effort to ensure consistency and uniformity with NMSA 1978, Section 61-1-3.5 ("Incomplete Application; Notice; Expiration"), the Department announced at the hearing on February 20, 2024 its intention to revise the proposed rule at 16.11.2.9 (B)(3) NMAC by changing the expiration period for a pending application from 6 months to one year from the date the application is received.

9. The Secretary finds that the change described in paragraph 8 of this Statement of Reasons falls within the scope of the proposed rulemaking proceeding, consistent with 1.24.25.14 (C) NMAC ("Rule Making Record and Adoption of Rule").

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10. The Secretary finds that the Hearing Officer has appropriately considered the comments received and finds that the recommendation of the Hearing Officer is appropriate. The Secretary hereby adopts and incorporates all of the findings and the recommendation of the Hearing Officer, as stated in Hearing Officer's Report issued on March 19, 2024.

11. The Cabinet Secretary finds that the rule is within the Department of Health's statutory authority.

12. The Cabinet Secretary finds that the proposed rule is in harmony with the agency's express statutory authorities and/or spring from those powers that may fairly be implied therefrom, and that the rule is consistent with the statutory purposes of the Department of Health. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 106 (internal citations omitted).

13. The Cabinet Secretary finds that the proposed rule, as revised based on public comments, falls within the scope of the rulemaking proceeding, that it is a logical outgrowth of the notice given and comment received, and that commenters were afforded a fair opportunity to present their views on the contents of the rule. *See* 1.24.25.14 (C) NMAC; *see also* N.M. Att'y Gen. Op. 87-59 (1987) (*citing BASF Wyandotte Corp. v. Costle*, 598 F.2d 637, 642 (1st Cir. 1979)).

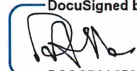
14. The purpose of the rule is to adopt the changes and amendments to the rule. The purpose of repeal and replacement is also necessary because the New Mexico Commission of Public Records has stated in its Guide that a repeal and replacement of an existing rule is very helpful when a rule has been substantially rewritten and restructured such that a detailed section by section comparison is not possible and may be confusing to the public.

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15. The Cabinet Secretary finds that the rule is appropriate and consistent with authorizing laws; and for each of the reasons stated, and the proposed rule, 16.2.11 NMAC (“Certified Nurse-Midwives”), as revised based on public comments, is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH

DocuSigned by:



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Patrick M. Allen, Cabinet Secretary

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The New Mexico Department of Health approved the repeal of its rule 16.11.2 NMAC - Certified Nurse- Midwives (filed 11/13/2020) and replaced it with 16.11.2 NMAC - Certified Nurse-Midwives (adopted 04/18/2024) and effective 05/07/2024.

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