

New Mexico Department of Health
Rulemaking Hearing on Proposed Repeal & Replacement of
Licensed Nurse Midwives Rule 16.11.2 NMAC

Hearing Date: February 20, 2024

HEARING EXHIBITS

1. Notice of Rule Hearing
2. Proposed Rule Changes
3. Affidavit of Notice to the Public
4. Affidavit of Publication of Notice of Hearing in the Albuquerque Journal
5. Affidavit of Publication of Notice of Hearing in the New Mexico Register
6. Letter Appointing Hearing Officer
7. Written Public Comment(s)
8. Affidavit of Notice to the Public

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 16.11.2 NMAC, “Certified Nurse-Midwives”. The public hearing will be held on February 20, 2024 at 9:00 a.m. MDT via web video conference and telephone. The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the current rule, 16.11.2 NMAC, concerning the licensing, scope of practice, and disciplining of certified nurse-midwives (CNM).

The proposed replacement rule includes the following amendments and changes to the following rule parts:

1. Amended 16.11.2.7 NMAC Definitions to add definitions for audit, client, continuing education, continuing education unit, substance use disorder, and changing the definition of prescription monitoring program, and valid CNM-client relationship. The purpose of these definition changes is to provide a clear definition of what an audit is to a CNM and to provide a clear understanding to the CNM of what is expected of each licensee for the continuing education requirement. The purpose of the definition change to the prescription monitoring program is to remove any stigmatizing verbiage associated with addiction. The purpose of the change to the definitions to include substance use disorder is to use this phrase in the rule in relation to prescribing activities of a CNM and continuing education requirements, and it follows the National Institute of Mental Health definition. The purpose of the change to the definition of a valid CNM-client relationship is to move the description of the relationship from the definition further into the regulation in the section on the practice of midwives to more appropriately define the prescriptive practice.
2. Amended 16.11.2.9 NMAC Licensure to clear up confusion over the fact that multi-state license regulations have random license expiration dates and some of those licensees in other states do not have a New Mexico nursing license. The purpose of adding Paragraph (3) of Subsection B of 16.11.2.9 NMAC is to provide clarity on refunds on incomplete applications.
3. Amended Subparagraph (c) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC to specify that a new category of continuing education shall focus on health equity topics. The purpose of this amendment is to bring the New Mexico license regulation into line with national competency standards set forth by the American Midwifery Certification Board (AMCB).
4. Amended Item (i) of Subparagraph (d) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC to reflect the current requirements of the New Mexico CNM’s contact hours per licensure period.
5. Added a new Section 16.11.2.10 NMAC Continuing Education to be as descriptive as possible to the licensee as to what is required for continuing education (CE) content. The purpose is to provide clarity to licensees as to what is included in a CE audit, and from what recognized approved bodies CE taken will be approved, and to outline to the licensee the duties in reporting CE to the program.
6. Amended Subsection A of 16.11.2.11 NMAC Practice of the Certified Nurse-Midwife “Scope of Practice” to change the description of those persons whom a CNM may provide services to from “women” and “patients” to “clients”. The purpose of the section change is to clarify that CNMs can provide care to all persons who seek midwifery care regardless of gender identity or sexual orientation.
7. Amended Subsection B of 16.11.2.11 NMAC Practice of the Certified Nurse-Midwife “Prescriptive Authority” to include the language for a CNM-client relationship previously set forth in the definitions section. The purpose of placement of the text in this section is because it is more appropriate in this section of the regulation dealing with the practice of the licensee.
8. Amended Subsection A of 16.11.2.12 NMAC “License, Denial, Suspension, or Revocation: Disciplinary Action. Grounds for action” to specify additional specific actions that may result in disciplinary action. The purpose of these additions is to clarify for licensees the sections of the regulation which non-compliance with may result in a disciplinary action.
9. Amended 16.11.2.13 NMAC Advisory Board to include additional members. The purpose of the changes is to provide more memberships for representatives who are currently practicing and to provide a specific seat on the board for a student who may remain on the board after graduation.

The purpose of the proposed repeal and replacement 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.

The legal authority authorizing the proposed rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, Subsections S and V of Section 24-1-3 NMSA 1978, and 24-1-4.1 NMSA 1978.

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/>.

Any interested member of the public may attend the hearing, and anyone may offer public comments on the proposed rule orally at the hearing. To access the hearing by telephone: please call 1-505-312-4308, phone conference i.d. code 749241820 #. To access the hearing via internet: please go to <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>, enter the following meeting i.d. code and passcode where indicated on screen—meeting i.d. code 230 233 080 029, Passcode: ZoTVtA, then click the “Join a meeting” button. All oral comments will be recorded.

Any person may submit written public comment concerning the rule amendments. Written comments may be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rules to the attention of:

Abigail Reese, PhD, CNM
Maternal Health Program Manager
Family Health Bureau/Public Health Division
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Mailed written comments must be received no later than 5:00 p.m. MDT on February 20, 2024, the day of the public hearing. Written comments may also be submitted to the email address shown above through 5:00 pm MDT on the date of the hearing. All written comments will be published on the agency website at <http://nmhealth.org/publication/regulation/> within 3 business days of receipt, and will be available at the Office of the New Mexico Department of Health, at the address above, 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 Christine Guillen by telephone at (505) 709-5538. The Department requests at least ten (10) days' advance notice to provide requested special accommodations.

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, 16.11.2.1 NMAC, xx/xx/2024]

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, 16.11.2.2 NMAC, xx/xx/2024]

16.11.2.3 STATUTORY AUTHORITY: This rule is authorized by Subsection E of Section 9-7-6 NMSA 1978, Subsection S and Subsection V of Section 24-1-3 NMSA 1978 and Section 24-1-4.1 NMSA 1978.
 [16.11.2.3 NMAC - Rp, 16.11.2.3 NMAC, xx/xx/2024]

16.11.2.4 DURATION: Permanent.
 [16.11.2.4 NMAC - Rp, 16.11.2.4 NMAC, xx/xx/2024]

16.11.2.5 EFFECTIVE DATE: January_____, 2024, unless a later date is cited at the end of a section.
 [16.11.2.5 NMAC - Rp, 16.11.2.5 NMAC, xx/xx/2024]

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, 16.11.2.6 NMAC, xx/xx/2024]

16.11.2.7 DEFINITIONS:

A. Definitions beginning with "A":

- (1) "ACNM" means the American college of nurse-midwives.
- (2) "AMCB" means American midwifery certification board.
- (3) "Addiction" is a neurobehavioral syndrome with genetic and environmental influences

that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opiate or opioid therapy for pain and should not by themselves be considered addiction.

(4) "Audit" means an examination and verification of continuing education and practice documents.

B. Definitions beginning with "B": "Board" means the certified nurse-midwifery advisory board established under these rules.

C. Definitions beginning with "C":

(1) "Certified nurse-midwife (CNM)" means an individual educated in the two disciplines of nursing and midwifery, who is certified by the AMCB or its designee and who is licensed under this rule.

(2) "Chronic pain" means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. For purposes of this rule, chronic pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(3) "Client" means any person domiciled, residing, or receiving care, service or treatment from a New Mexico licensed CNM. This includes but is not limited to patients, residents, or consumers.

(4) "CNM license" means the legal privilege to practice within the scope of this rule as authorized by the department.

(5) "Contact hour" means 50-60 minutes of an organized learning experience relevant to CNM practice.

(6) "Continuance" means the adjournment or postponement of a trial or other proceeding to a future date.

(7) **“Continuing education”** means planned learning experiences occurring after initial licensure. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of midwifery practice, thus improving health care to the public.

(8) **“Continuing education unit”** means 10 contact hours of participation in an organized continuing education experience.

(9) **“Controlled substance”** means any drug or therapeutic agent listed in Schedules I through V of Sections 30-31-6 to 30-3-10 NMSA 1978, Controlled Substances Act, or rules adopted thereto, which is commonly understood to include narcotics.

D. Definitions beginning with “D”:

(1) **“Dangerous drug”** means a prescription drug other than a controlled substance that has been determined by law to be unsafe for self-administration and is included in Sections 26-1-1 to 26-1-26 NMSA 1978, New Mexico Drug, Device and Cosmetic Act, and in Section 30-31-6 NMSA, Controlled Substances Act.

(2) **“Department”** means the New Mexico department of health.

(3) **“Division”** means the public health division.

E. Definitions beginning with “E”: **“Electronic professional licensing management system”** means the system by which licensees apply and submit an application for midwifery license and keep up to date their online profile.

F. Definitions beginning with “F”: [RESERVED]

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: [RESERVED]

I. Definitions beginning with “I”: [RESERVED]

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”: **“Lapsed license”** means a license that a person has voluntarily lapsed, has failed to renew as required, or the license of a person who failed to meet stated obligations for renewal within a stated time.

M. Definitions beginning with “M”: [RESERVED]

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

O. Definitions beginning with “O”: **“Opioid antagonist”** means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body; this includes naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

P. Definitions beginning with “P”:

(1) **“Pain”** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage or described in terms of such inflammation and damage, which could include acute, persistent, or chronic pain.

(2) **“Peer review”** means the assessment and evaluation of CNM practice by other CNMs and 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.

(3) **“Physical dependence”** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

(4) **“Prescription monitoring program (PMP)”** means a centralized electronic system within the New Mexico board of pharmacy that collects, monitors, and analyzes data submitted by dispensing practitioners and pharmacies related to the prescribing and dispensing of controlled substances. The data are used to support efforts in education, research, enforcement, and misuse prevention.

(5) **“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.

Q. Definitions beginning with “Q”:

(1) **“Quality assurance”** means monitoring structural, procedural, and outcome indicators as they relate to accepted standards.

(2) **“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, client satisfaction, clinical outcomes, population specific care, culturally appropriate care, appropriate use of technology and resources, and access to care.

R. Definitions beginning with “R”:

(1) **“Reactivation”** means the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this process does not involve disciplinary action at any juncture.

(2) **“Reinstatement”** means the process whereby a license which has been subject to revocation or suspension, is returned to active status; this process always involves disciplinary action.

S. Definitions beginning with “S”: **“Substance use disorder”** means a treatable mental disorder that affects a person's brain and behavior, leading to their inability to control their use of substances like legal or illegal drugs, alcohol or medications.

T Definitions beginning with “T”:

(1) **“Therapeutic purpose”** means the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines.

(2) **“Tolerance”** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug’s effects over time.

U. Definitions beginning with “U”: [RESERVED]

V. Definitions beginning with “V”: **“Valid CNM-client relationship”** means a professional relationship between the CNM and the client for the purpose of maintaining the client’s well-being. At minimum, this relationship is an interactive encounter between the CNM and client involving an appropriate history and physical or mental examination; ordering labs or diagnostic tests sufficient to make a diagnosis; and providing, prescribing, or recommending treatment, or referring to other health care providers. A client record must be generated by the encounter.

W. Definitions beginning with “W”: [RESERVED]

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

[16.11.2.7 NMAC - Rp, 16.11.2.7 NMAC, xx/xx/2024]

16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:

A. ACNM “core competencies for basic midwifery practice”.

B. ACNM “standards for the practice of midwifery”.

C. ACNM handbook: “the home birth practice manual”.

[16.11.2.8 NMAC - Rp, 16.11.2.8 NMAC, xx/xx/2024]

16.11.2.9 LICENSURE:

A. Licensure requirements: A CNM practicing in New Mexico shall hold an active 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 AMCB or its designee. The department may deny licensure, including renewal, reinstatement, or reactivation of licensure, to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. If denied due to disciplinary action, re-application will only be considered after a minimum of one year from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions. 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 via the electronic professional licensing management system:

(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 AMCB or its designee;

(d) the fee designated in Subsection E of 16.11.2.9 NMAC.

(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 last day of the month of the CNM’s birth month. A CNM license shall be valid for a maximum of two years.

(3) If the licensure process is not completed, the application becomes null and void six months after the date of application being received, and fees paid are not refundable.

(4) If a license is denied due to disciplinary action on initial application, the applicant may reapply after one year and upon meeting all the requirements under Subsection B of 16.11.2.9 NMAC.

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

C. Licensure renewal:

(1) A CNM's renewed license shall expire on the last day of the month of the CNM's birth month of the second year after it is issued.

(2) An applicant for licensure renewal shall submit to the department via the electronic professional licensing management system:

(a) a completed application electronically submitted by the fifth day of the month of the expiration of the 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 AMCB or its designee;

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

(e) the fee designated in Subsection E of this section;

(f) an additional fee designated in Subsection E of this section for applications electronically submitted after the fifth day of the month after the license is expiring.

(3) Continuing education: CNMs must complete a minimum of 30 contact hours during the two years preceding license renewal.

(a) 15 of the contact hours shall be pharmacology-related. As part of the pharmacology-related contact hours, a CNM who holds a CNM license shall submit with the first license renewal application proof of completing a minimum of five contact hours on any of the following topics:

(i) the CNM rule as it applies to management of chronic pain,

(ii) the pharmacology and risks of controlled substances,

(iii) the problems of substance use disorder and addiction, or

(iv) state and federal regulations for the prescription of controlled substances.

(b) With each subsequent license renewal application, a CNM shall submit proof of completing a minimum of two contact hours on the above topics.

(c) A minimum of two of the contact hours shall be focused on health equity. Acceptable content includes but is not limited to:

(i) Implicit bias training to identify strategies to reduce bias during assessment, diagnosis, and care. This may include, but is not limited to training in bias, racism, and poverty, that manifest as health inequities.

(ii) Development of individual and system level interventions and self-reflection to assess how the CNM's social position can influence their relationship with clients and their communities.

(iii) Skills to enable a health care professional to care effectively for clients from diverse cultures, groups, and communities and apply health equity concepts into practices.

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

(i) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection C of 16.11.2.10 NMAC, 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 nurse-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 nurse-midwifery practice; each university or college unit shall be credited as 15 hours of continuing education for a semester system and 10 hours of continuing education for a quarter system; and

(iv) acting as preceptor for a midwifery student; each 10 hours of precepting shall be credited as one continuing education hour, with maximum award of 10 contact hours;

verification shall be provided by an accreditation commission for midwifery education (ACME) accredited nurse-midwifery education program or can be verified by a division-approved form. This option shall not be accepted in place of pharmacology-related contact hours.

(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 Subsection S of 16.11.2.7 NMAC, Subsection W of 16.11.2.7 NMAC, and Subsection X of 16.11.2.7 NMAC.

(5) If license renewal is denied, the applicant may request an administrative hearing under the terms set forth by Paragraph (5) of Subsection C of 16.11.2.12 NMAC.

D. Reactivation of a CNM 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 CNM must apply for reactivation of the license, paying all added fees before being allowed to practice. A CNM may not work with a lapsed license or disciplinary action will be taken.

(2) The requirements for reactivation of a CNM 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 Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except the applicant must pay the additional fee for reactivation pursuant to Subsection F of 16.12.2.9 NMAC.

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

E. Reinstatement of a CNM license:

(1) The requirements for reinstatement of a revoked or suspended CNM license are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except that the fee is higher than a renewal, as designated in Subsection F of 16.11.2.9 NMAC.

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

F. 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) one hundred and fifty dollars (\$150.00) 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; this fee is in addition to the renewal fee;

(4) two hundred dollars (\$200.00) for reinstatement of a revoked or suspended license, or reactivation of a lapsed license; this fee is in addition to the renewal fee;

(5) twenty-five dollars (\$25.00) for verifying licenses by FAX or letter;

(6) fifty dollars (\$50.00) for rejected electronic payment for insufficient funds.

G. Change of address or other contact information: a CNM shall submit a change of any contact information to the department's electronic professional licensing management system within 30 days of the change; failure to update information within this time frame may result in disciplinary action.

[16.11.2.9 NMAC - Rp, 16.11.2.9 NMAC, xx/xx/2024]

16.11.2.10 CONTINUING EDUCATION:

A. Introduction:

(1) The division prescribes the following regulations establishing requirements for CE to be met by the licensee to protect the health and well-being of the citizens of New Mexico and to promote current midwifery knowledge and practice.

(2) Philosophy of CE: The division believes that CE is one of the most important responsibilities of the midwife and is a lifelong process. The primary responsibility for CE rests with the individual midwife. A diversity of midwifery-related learning activities is recommended to enhance the scope of professional development.

B. Requirements and rules:

(1) Records:

(a) All licensees must indicate compliance with the CE required by these rules on the renewal application. All information must be completed as requested.

(b) Licensees are responsible for maintaining their own CE records and for keeping the certificates of verification of attendance of CE activities for at least one year after the license is renewed. Copies of certificates must be submitted to the division if audited and requested.

(2) CE Audit:

(a) Continuing education records are subject to audit by the division.

(b) Licensee may be subject to disciplinary action by the division if non-compliant with a request for additional information within 60 days of the first notice of CE non-compliance.

C. Approved continuing education: To be acceptable in New Mexico, the CE activity must have been approved by a recognized approval body and must enhance the licensee's scope of professional development as related to CNM scope of practice. The participant must receive a certificate of attendance which validates the number of approved CE hours awarded, name of the participant, sponsoring agency, approval body and date attended.

(1) Recognized approval bodies for CE for CNMs:

(a) clinician-level continuing education accrediting agencies approved by the division;

(b) national or state recognized nursing organizations or boards of nursing;

(c) other state boards of nursing.

(2) Other CE which may be accepted as approved CE for CNMs:

(a) academic credit, computation: as set forth in Item (iii) of Subparagraph (d) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC;

(b) CE units (CEUs) or contact hours awarded by CE divisions within educational institutions of higher learning;

(c) educational offerings approved through other generally recognized health care or professional organizations as related to CNM's scope of practice.

[16.11.2.10 NMAC - N, xx/xx/2024]

16.11.2.11 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:

A. Scope of practice: Practice by CNMs encompasses independently providing a full range of primary health care services for clients from adolescence to beyond menopause. These services include primary care; sexual and reproductive health care; gynecologic health; family planning services; pre-conception care; care during pregnancy, childbirth, and the postpartum period; and care of the normal newborn up to six weeks of age. CNMs provide care for all individuals who seek midwifery care, inclusive of all gender identities and sexual orientations. CNMs provide initial and ongoing comprehensive assessment, diagnosis, and treatment. They conduct physical examinations; independently prescribe, distribute, and administer dangerous drugs, devices, and contraceptive methods, and controlled substances in Schedules II through V of Sections 30-31-1 NMSA 1978, Controlled Substances Act; admit, manage, and discharge clients; order and interpret laboratory and diagnostic tests; and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with clients in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals, and birth centers. 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". A CNM who expands beyond the ACNM "core competencies" to incorporate new procedures that improve care for their clients shall comply with the guidelines set out in the ACNM "standards for the practice of midwifery", standard VIII. Practice guidelines for home births should be informed by the most recent edition of the "ACNM home birth practice manual."

B. Prescriptive authority:

(1) Dangerous drugs: A CNM who prescribes, distributes, or administers a dangerous drug or device shall do so in accordance with Section 26-1 NMSA 1978, New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances:

(a) A CNM shall not prescribe nor distribute controlled substances in Schedule I of Section 26-1 1978 NMSA, Controlled Substances Act.

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

(c) A CNM who prescribes, distributes, or administers a controlled substance in Schedules II-V of Section 26-1 NMSA 1978, Controlled Substances Act, shall do so in accordance with the Controlled Substances Act.

(d) 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 or administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the Subparagraphs (a), (b) and (c) of Paragraph (2) of this subsection.

(e) A CNM may prescribe, provide samples of, and dispense any dangerous drug to a client if, at the time of the prescription, the CNM has a valid CNM-client relationship. The relationship includes:

- (i) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is indicated and necessary for treatment of a condition when the CNM prescribes a dangerous drug or controlled substance;
- (ii) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is not contraindicated for the individual;
- (iii) the CNM provides a client with appropriate information on the proper dosage, route, frequency, and duration of a drug treatment;
- (iv) the CNM informs the client of possible untoward effects and side effects of a proposed treatment;
- (v) the CNM provides care for a client in the event of an untoward effect or a side effect that requires care;
- (vi) the CNM provides for client education regarding a condition and the condition's treatment to enhance client compliance with plan of care;
- (vii) the CNM provides for appropriate follow-up care, including further testing, treatment and education, as appropriate; and
- (viii) the CNM documents, at minimum, the indication, drug, and dosage of any prescribed drugs in a health record for the individual.

(3) Prescriptions: A CNM may prescribe by telephone, by written prescription, by e-mail, or through an electronic health record (EHR) system. Controlled substances may only be prescribed by written or electronic prescription. 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.

(4) Labeling: When distributing a drug, a CNM shall label it with the client's name and date of birth; the date; instructions for use; and the CNM's name, address, and telephone number.

C. Guidelines for management of chronic pain or other conditions with controlled substances: The treatment of chronic pain or other conditions with various modalities, including controlled substances such as opioids, is a legitimate practice when done in the usual course of CNM practice. The goal when treating chronic pain is to reduce or eliminate pain and also to avoid development of or contribution to addiction, drug misuse and overdose. Effective dosages should be prescribed, with both under- and over-prescribing to be avoided, using client protection as a guiding principle. The CNM should provide control of the client's pain for its duration, while effectively addressing other aspects of the client's functioning, including physical, psychological, social, and work-related factors. A CNM may treat clients with substance use disorder, physical dependence, or tolerance who have pain, however such clients require very close monitoring and precise documentation.

(1) If, in a CNM's professional opinion, a client is seeking pain medication for reasons that are not medically justified, the CNM is not required to prescribe controlled substances for the client.

(2) When prescribing, dispensing, or administering controlled substances for management of chronic pain, a CNM shall:

(a) obtain a PMP report for the client covering the preceding 12 months from the New Mexico board of pharmacy and any other state's report that is applicable and available;

(b) complete a history and physical examination and include an evaluation of the client's psychological and pain status, any previous history of significant pain, past history of alternate treatments for pain, potential for substance misuse, coexisting disease or medical conditions, and the presence of medical indications or contra-indications related to controlled substances;

(c) be familiar with and employ screening tools, as well as the spectrum of available modalities for therapeutic purposes, in the evaluation and management of pain, and consider an integrative approach to pain management in collaboration with other care providers, including but not limited to acupuncturists, chiropractors, doctors of oriental medicine, exercise physiologists, massage therapists, pharmacists, physical therapists, psychiatrists, or psychologists;

(d) develop a written individual treatment plan taking age, gender, and culture into consideration, with stated objectives by which treatment can be evaluated, such as degree of pain relief, improved physical and psychological function, or other accepted measures, and include any need for further testing, consultation, referral, or use of other treatment modalities as appropriate;

(e) discuss the risks and benefits of using controlled substances with the client or legal guardian and document this discussion in the medical record;

(f) make a written agreement with the client or legal guardian outlining client responsibilities, including a provision stating that the chronic pain client will receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible;

(g) maintain complete and accurate records of care provided and drugs prescribed, including the indications for use, the name of the drug, quantity, prescribed dosage, and number of refills authorized;

(h) when indicated by the client's condition, consult with health care professionals who are experienced in the area of the chronic pain or other conditions, though not necessarily specialists in pain control, both early in the course of long-term treatment and at least every six months;

(i) when treating a client with addiction, substance use disorder or physical dependence, use drug screening prior to and during the course of treatment to identify the drugs the client is consuming and compare the screening results with clients' self-reports (this should be included in the written agreement, see Subparagraph (f) above);

(j) note possible indications of drug misuse by a client and take appropriate steps to further investigate and to avoid contributing to drug misuse; such steps may include termination of treatment. Information about some of the indications may be available only through PMP reports. The following list of possible indications of drug misuse is non-exhaustive:

(i) receiving controlled substances from multiple prescribers;

(ii) receiving controlled substances for more than 12 consecutive weeks;

(iii) receiving more than one controlled substance analgesic;

(iv) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone;

(v) overutilization, including but not limited to early refills;

(vi) appearing overly sedated or intoxicated upon presentation; or

(vii) an unfamiliar client requesting a controlled substance by specific name, street name, color, or identifying marks.

(k) comply with the opioid antagonist prescribing practices as set forth in the Pain Relief Act Section 24-2D-1, et.al NMSA1978.

D. Prescription Monitoring Program (PMP) Requirements: The department requires participation in the PMP to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals. Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting. A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the client's medical record.

Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a client for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the client for the preceding 12 months.

When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the client's medical record. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

(1) A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V:

(a) for a period of four days or less; or

(b) to a client in a nursing facility; or

(c) to a client in hospice care.

(d) or when prescribing, dispensing, or administering of: testosterone, pregabalin, lacosamide, ezogabine or stimulant therapy for pediatric clients less than age 14.

(2) Upon review of a prescription monitoring report for a client, the practitioner shall identify, be aware, and document if a patient is currently:

- (a) receiving opioids from multiple prescribers;
- (b) receiving opioids and benzodiazepines concurrently;
- (c) receiving opioids for more than 12 consecutive weeks;
- (d) receiving more than one controlled substance analgesic;
- (e) receiving opioids totaling more than 90 morphine milligram equivalents per day;
- (f) exhibiting potential for misuse of opioids and other controlled substances, such

as any of the following indicators:

- (g) over-utilization;
- (h) requests to fill early;
- (i) requests for a controlled substance or specific opioid by specific name, street name; color, or identifying marks;
- (j) requests to pay cash when insurance is available;
- (k) receiving opioids from multiple pharmacies; or
- (l) appearing overly sedated or intoxicated upon presentation.
- (m) receiving a new prescription for any long-acting controlled substance analgesic

formulation, including oral or transdermal dosage forms or methadone.

(3) Upon recognizing any of the above conditions described in Subparagraph (j) of Paragraph (2) of Subsection C of 16.11.2.11 NMAC, the practitioner, using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse or overdose. These steps may involve counseling the client on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(4) Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a client's initial enrollment into the Opioid Treatment Program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in Schedule II-V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the client's medical record.

E. Immediate reporting: A CNM must report within 48 hours to the division any neonatal or maternal mortality in clients for whom the provider has cared in the perinatal period in a setting other than a licensed health facility; this includes stillbirths. These will be reviewed by the division on a case-by-case basis for compliance with these CNM regulations.

F. 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;
- (5) "requirement for freestanding birth centers," 7.10.2 NMAC; and
- (6) "birthing workforce retention fund," 7.30.9 NMAC.

[16.11.2.11 NMAC - Rp, 16.11.2.10 NMAC, xx/xx/2024]

16.11.2.12 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 of incompetence, unprofessional conduct, or other grounds listed in this section, pursuant to Subsection V of Section 24-1-3, NMSA 1978.

A. Grounds for action:

(1) **Incompetence:** A CNM who fails 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" is considered incompetent. 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 result 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 that is beyond the scope of CNM 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 or personnel 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 rule of the department;
 - (j) failure to follow established procedure regarding controlled substances;
 - (k) failure to make or to 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 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 a non-licensed person; or
 - (o) failure to provide information requested by the department pursuant to this rule within 20 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 pursuant to Paragraph (1) of Subsection A of Section 28-2-4 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 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 20 business days of the CNM 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 CNM who appears to have violated the rule for the practice of certified nurse-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) Failure to report to the department a change in contact information within 30 days of the change as set forth in Subsection G of 16.11.2.9 NMAC.
- (11) Non-compliance for requirements of CEs as determined by audit as set forth in Paragraph (2) of Subsection B of 16.11.2.10 NMAC.
- (12) 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 procedures set forth in Paragraphs (4) and (5) of Subsection C of 16.11.2.12 NMAC.

C. Disciplinary proceedings: Disciplinary proceedings shall be conducted in accordance with Sections 61-1-1 through 61-1-31 NMSA 1978 of the Uniform Licensing Act (ULA). Disciplinary proceedings related to a CNM's treatment of a client, for chronic pain or other conditions, with a controlled substance shall be conducted in accordance with Sections 24-2D-1 through 24-2D-6 NMSA 1978 of the Pain Relief Act, in addition to this rule.

(1) Filing of a complaint:

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

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

(ii) An allegation of a wrongful act 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), as defined in the ULA, being issued by the department if a violation occurred or it may result in a dismissal of the complaint if no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

(3) Notice of contemplated action:

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

(b) The director of the division, or her/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) The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative attorney of the department at any time prior to the hearing; if a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval; the proposed stipulation and agreement does not divest the department of its authority to require a formal hearing or final approval, amendment, or rejection; if a settlement is not reached, a hearing shall be held.

(d) 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.

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

(f) 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 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.

(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 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 and placed in the CNM's licensure file. The department shall mail a copy of the written decision to the authority(ies) that license(s) the CNM as a registered nurse and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

D. 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) For reinstatement of licenses for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, 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 is the controlling date, unless otherwise specified in the order. Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of revoked license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(3) Requests for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension. 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 suspended license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(4) 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.

[16.11.2.12 NMAC - Rp, 16.11.2.11 NMAC, xx/xx/2024]

16.11.2.13 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) up to four New Mexico licensed CNMs, at least two of whom are actively practicing midwifery;

(2) one New Mexico licensed midwife (LM) who is actively practicing midwifery;

(3) two members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;

(4) one actively practicing New Mexico licensed board-certified obstetrician-gynecologist physician;

(5) one student nurse-midwife, who may continue to serve out their term following graduation; and

(6) one employee of the division.

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; a student nurse-midwife who has completed their education is not eligible for a second term as the student member. The department representative shall not be subject to term limits.

C. 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.

D. 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 and the department of finance administration rules, Section 2.42.2 NMAC.

E. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.13 NMAC - Rp, 16.11.2.12 NMAC, xx/xx/2024]

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

[16.11.2.14 NMAC - Rp, 16.11.2.13 NMAC, xx/xx/2024]

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 12/12/1967.

HSSD 76-2, Nurse Midwife Regulations For New Mexico, filed 1/20/1976.

HED-80-6 (HSD), Regulations Governing the Practice of Certified Nurse Midwives, filed 10/17/1980.

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives, filed 11/04/1991.

History of Repealed Material:

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) repealed 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) repealed 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 6/6/2019) repealed 11/24/2020.

16.11.2 NMAC, Certified Nurse Midwives (filed 11/13/2020) repealed xx/xx/2024.

Other History:

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives (filed 11/04/1991) was renumbered into first version of the New Mexico Administrative Code as 16 NMAC 11.2, Certified Nurse Midwives, effective 10/31/1996.

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) was replaced by 16.11.2 NMAC Certified Nurse Midwives, effective 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 8/15/2013) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 6/25/2019.

16.11.2 NMAC, Certified Nurse Midwives (filed 6/6/2019) replaced by 16.11.2 NMAC, Certified Nurse Midwives effective 11/24/2020.

16.11.2 NMAC, Certified Nurse Midwives (filed 11/13/2020) replaced by 16.11.2 NMAC, Certified Nurse Midwives effective xx/xx/2024.

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, 16.11.2.1 NMAC, 11/24/2020]

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, 16.11.2.2 NMAC, 11/24/2020]

16.11.2.3 STATUTORY AUTHORITY: This rule is authorized by Subsection E of Section 9-7-6 NMSA 1978, Subsection S and Subsection V of Section 24-1-3 NMSA 1978 and Section 24-1-4.1 NMSA 1978.
 [16.11.2.3 NMAC - Rp, 16.11.2.3 NMAC, 11/24/2020]

16.11.2.4 DURATION: Permanent.
 [16.11.2.4 NMAC - Rp, 16.11.2.4 NMAC, 11/24/2020]

16.11.2.5 EFFECTIVE DATE: November 24, 2020 unless a later date is cited at the end of a section.
 [16.11.2.5 NMAC - Rp, 16.11.2.5 NMAC, 11/24/2020]

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, 16.11.2.6 NMAC, 11/24/2020]

16.11.2.7 DEFINITIONS:

A. Definitions beginning with "A":

(1) "ACNM" means the American college of nurse-midwives.

(2) "AMCB" means American midwifery certification board.

(3) "Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opiate or opioid therapy for pain and should not by themselves be considered addiction.

(4) "Audit" means an examination and verification of continuing education and practice documents

B. Definitions beginning with "B": "Board" means the certified nurse-midwifery advisory board established under these rules.

C. Definitions beginning with "C":

(1) "Certified nurse-midwife (CNM)" means an individual educated in the two disciplines of nursing and midwifery, who is certified by the AMCB or its designee and who is licensed under this rule.

(2) "Chronic pain" means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. For purposes of this rule, chronic pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(3) "Client" means any person domiciled, residing, or receiving care, service or treatment from a New Mexico licensed CNM. This includes but is not limited to patients, residents, or consumers.

(4) "CNM license" means a document issued by the department identifying a the legal privilege and authorization to practice within the scope of this rule as authorized by the department.

(5) "Contact hour" means 50-60 minutes of an organized learning experience relevant to CNM practice, approved by one of the following:

(a) accreditation council for continuing medical education (ACCME);

(b) ACNM;

(c) American college of obstetricians and gynecologists (ACOG);

(d) American academy of physician assistants (AAPA);

- (e) American academy of nurse practitioners (AANP);
- (f) nurse practitioners in women's health (NPWH); or
- (g) other clinician level continuing education accrediting agencies approved by the division.

(56) **"Continuance"** means the adjournment or postponement of a trial or other proceeding to a future date.

(7) **"Continuing education"** means planned learning experiences occurring after initial licensure. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of midwifery practice, thus improving health care to the public.

(8) **"Continuing education unit"** means 10 contact hours of participation in an organized continuing education experience.

(96) **"Controlled substance"** means any drug or therapeutic agent listed in Schedules I through V of Sections 30-31-6 to 30-3-10 NMSA 1978, Controlled Substances Act, or rules adopted thereto, which is commonly understood to include narcotics.

D. Definitions beginning with "D":

(1) **"Dangerous drug"** means a prescription drug other than a controlled substance that has been determined by law to be unsafe for self-administration and is included in Sections 26-1-1 to 26-1-26 NMSA 1978, New Mexico Drug, Device and Cosmetic Act, and in Sections 30-31-6 NMSA, Controlled Substances Act.

(2) **"Department"** means the New Mexico department of health.

(3) **"Division"** means the public health division.

E. Definitions beginning with "E": "Electronic professional licensing management system" means the system by which licensees apply and submit an application for midwifery license and keep up to date their online profile.

F. Definitions beginning with "F": [RESERVED]

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H": [RESERVED]

I. Definitions beginning with "I": [RESERVED]

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": "Lapsed license" means a license that a person has voluntarily lapsed, has failed to renew as required, or the license of a person who failed to meet stated obligations for renewal within a stated time.

M. Definitions beginning with "M": [RESERVED]

N. Definitions beginning with "N": "National practitioner data bank (NPDB)" means the web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers.

O. Definitions beginning with "O": "Opioid antagonist" means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body; this includes naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

P. Definitions beginning with "P":

(1) **"Pain"** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage or described in terms of such inflammation and damage, which could include acute, persistent, or chronic pain.

(2) **"Peer review"** means the assessment and evaluation of CNM practice by other CNMs and 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.

(3) **"Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

(4) **"Prescription monitoring program (PMP)"** means a centralized electronic system within the New Mexico board of pharmacy that collects, monitors, and analyzes data submitted by dispensing practitioners and pharmacies related to the prescribing and dispensing of controlled substances. The data are used to support efforts in education, research, enforcement, and misabuse prevention.

(5) "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.

Q. Definitions beginning with "Q":

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

(2) "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, client/patient satisfaction, clinical outcomes, population specific care, culturally appropriate care, appropriate use of technology and resources, and access to care.

R. Definitions beginning with "R":

(1) "Reactivation" means the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this process does not involve disciplinary action at any juncture.

(2) "Reinstatement" means the process whereby a license which has been subject to revocation or suspension, is returned to active status; this process always involves disciplinary action.

S. Definitions beginning with "S": [RESERVED]

(1) "Substance use disorder" means a treatable mental disorder that affects a person's brain and behavior, leading to their inability to control their use of substances like legal or illegal drugs, alcohol or medications.

T. Definitions beginning with "T":

(1) "Therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines.

(2) "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

U. Definitions beginning with "U": [RESERVED]

V. Definitions beginning with "V": "Valid CNM-client relationship" means a professional relationship between the CNM and the client for the purpose of maintaining the client's well-being. At minimum, this relationship is an interactive encounter between the CNM and client involving an appropriate history and physical or mental examination; ordering labs or diagnostic tests sufficient to make a diagnosis; and providing, prescribing, or recommending treatment, or referring to other health care providers. A client/patient record must be generated by the encounter. ~~The relationship includes:~~

~~(1) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is indicated and necessary for treatment of a condition when the CNM prescribes a dangerous drug or controlled substance;~~

~~(2) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is not contraindicated for the individual;~~

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

~~(4) the CNM informs the client of possible untoward effects and side effects of a proposed treatment;~~

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

~~(6) the CNM provides for client education regarding a condition and the condition's treatment to enhance client compliance with plan of care;~~

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

~~(8) the CNM documents, at minimum, the indication, drug, and dosage of any prescribed drugs in a health record for the individual~~

W. Definitions beginning with "W": [RESERVED]

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[16.11.2.7 NMAC - Rp, 16.11.2.7 NMAC, 11/24/2020]

16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:

- A. ACNM “core competencies for basic midwifery practice”.
- B. ACNM “standards for the practice of midwifery”.
- C. ACNM handbook: “the home birth practice manual”.

[16.11.2.8 NMAC - Rp, 16.11.2.8 NMAC, 11/24/2020]

16.11.2.9 LICENSURE:

A. Licensure requirements: A CNM practicing in New Mexico shall hold an active 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 AMCB or its designee. The department may deny licensure, including renewal, reinstatement, or reactivation of licensure, to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. If denied due to disciplinary action, re-application will only be considered after a minimum of one year from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions. 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 via the electronic professional licensing management system:

- (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 AMCB or its designee;
- (d) the fee designated in Subsection E of 16.11.2.9 NMAC.

(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 last day of the month of the CNM’s birth ~~expiration date of the registered nurse license recognized by the New Mexico board of nursing.~~ month. A CNM license shall be valid for a maximum of two years.

(3) If the licensure process is not completed, the application becomes null and void six months after the date of application being received, and fees paid are not refundable.

(4) If a license is denied due to disciplinary action on initial application, the applicant may reapply after one year and upon meeting all the requirements under Subsection B of 16.11.2.9 NMAC.

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

C. Licensure renewal:

(1) A CNM’s renewed license shall expire on the last day of the month of the CNM’s birth ~~expiration date of the registered nurse license recognized by the New Mexico board of nursing.~~ month of the second year after it is issued.

(2) An applicant for licensure renewal shall submit to the department via the electronic professional licensing management system:

- (a) a completed application electronically submitted by the fifth day of the month of the expiration of the 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 AMCB or its designee;
- (d) proof of having met the continuing education and quality management requirements in Paragraphs (3) and (4) of this subsection; and
- (e) the fee designated in Subsection E of this section;
- (f) an additional fee designated in Subsection E of this section for applications electronically submitted after the fifth day of the month after the license is expiring.

(3) Continuing education: CNMs must complete a minimum of 30 contact hours during the two years preceding license renewal.

(a) 15 of the contact hours shall be pharmacology-related. As part of the pharmacology-related contact hours, a CNM who holds a CNM license shall submit with the first license renewal application proof of completing a minimum of five contact hours on any of the following topics:

- (i) the CNM rule as it applies to management of chronic pain,
- (ii) the pharmacology and risks of controlled substances,
- (iii) the problems of substance use disorder~~abuse~~ and addiction, or

(iv) state and federal regulations for the prescription of controlled substances.

(b) With each subsequent license renewal application, a CNM shall submit proof of completing a minimum of two contact hours on the above topics.

(c) A minimum of two (2) of the contact hours shall be focused on health equity. Acceptable content includes but is not limited to:

(i) Implicit bias training to identify strategies to reduce bias during assessment, diagnosis, and care. This may include, but is not limited to training in bias, racism, and poverty, that manifest as health inequities.

(ii) Development of individual and system level interventions and self-reflection to assess how the CNM's social position can influence their relationship with clients and their communities.

(iii) Skills to enable a health care professional to care effectively for clients from diverse cultures, groups, and communities and apply health equity concepts into practices.

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

(i) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection CH of 16.11.2.107 NMAC, 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 nurse-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 nurse-midwifery practice; each university or college unit shall be credited as 15 hours of continuing education for a semester system and ten (10) hours of continuing education for a quarter system; and

(iv) ~~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, with maximum award of ten (10) contact hours; verification shall be provided by an accreditation commission for midwifery education (ACME) accredited nurse-midwifery education program or can be verified by a division-approved form;~~ acting as primary preceptor for a licensed midwifery student upon verification of out of hospital setting practice by the CNM, prior to preceptor relationship. This option shall not be accepted in place of pharmacology-related contact hours.

(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 Subsection S of 16.11.2.7 NMAC, Subsection W of 16.11.2.7 NMAC, and Subsection X of 16.11.2.7 NMAC.

(5) If license renewal is denied, the applicant may request an administrative hearing under the terms set forth by Paragraph (5) of Subsection C of 16.11.2.124 NMAC.

D. Reactivation of a CNM 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 CNM must apply for reactivation of the license, paying all added fees before being allowed to practice. A CNM may not work with a lapsed license or disciplinary action will be taken.

(2) The requirements for reactivation of a CNM 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 Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except the applicant must pay the additional fee for reactivation pursuant to Subsection F of 16.12.2.9 NMAC.

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

E. Reinstatement of a CNM license:

(1) The requirements for reinstatement of a revoked or suspended CNM license are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except that the fee is higher than a renewal, as designated in Subsection F of 16.11.2.9 NMAC.

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

- F. 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) one hundred and fifty dollars (\$150.00) 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; this fee is in addition to the renewal fee;
 - (4) ~~one hundred and fifty~~two hundred dollars (~~\$150.00~~\$200.00) for reinstatement of a revoked or suspended license, or reactivation of a lapsed license; this fee is in addition to the renewal fee;
 - (5) twenty-five dollars (\$25.00) for verifying licenses by FAX or letter;
 - (6) fifty dollars (\$50.00) for rejected electronic payment for insufficient funds.
 - ~~(6) thirty dollars (\$30.00) for a hard copy of a license certificate (8 1/2" x 11" size).~~
- G. Change of address or other contact information:** a CNM shall submit a change of any contact information to the department's electronic professional licensing management system within 30 days of the change; failure to update information within this time frame may result in disciplinary action.-

[16.11.2.9 NMAC - Rp, 16.11.2.9 NMAC, 11/24/2020]

16.11.2.10 CONTINUING EDUCATION:

A. Introduction:

- (1) The division prescribes the following regulations establishing requirements for CE to be met by the licensee to protect the health and well-being of the citizens of New Mexico and to promote current midwifery knowledge and practice.
- (2) Philosophy of CE: The division believes that CE is one of the most important responsibilities of the midwife and is a lifelong process. The primary responsibility for CE rests with the individual midwife. A diversity of midwifery-related learning activities is recommended to enhance the scope of professional development.

B. Requirements and rules:

(1) Records:

- (a) All licensees must indicate compliance with the CE required by these rules on the renewal application. All information must be completed as requested.
- (b) Licensees are responsible for maintaining their own CE records and for keeping the certificates of verification of attendance of CE activities for at least one year after the license is renewed. Copies of certificates must be submitted to the division if audited and requested.

(2) CE Audit:

- (a) Continuing education records are subject to audit by the division.
- (b) Licensee may be subject to disciplinary action by the division if non-compliant with a request for additional information within 60 days of the first notice of CE non-compliance.

C. Approved continuing education: To be acceptable in New Mexico, the CE activity must have been approved by a recognized approval body and must enhance the licensee's scope of professional development as related to CNM scope of practice. The participant must receive a certificate of attendance which validates the number of approved CE hours awarded, name of the participant, sponsoring agency, approval body and date attended.

(1) Recognized approval bodies for CE for CNMs:

- (a) clinician-level continuing education accrediting agencies approved by the division
- (b) national or state recognized nursing organizations or boards of nursing
- (c) other state boards of nursing

(2) Other CE which may be accepted as approved CE for CNMs:

- (a) academic credit, computation: one academic credit equals 15 contact hours;
- 16.11.2.9 (C)(3)(d)(iii) NMAC
- (b) CE units (CEUs) or contact hours awarded by CE divisions within educational institutions of higher learning;
- (c) educational offerings approved through other generally recognized health care or professional organizations as related to CNM's scope of practice.

16.11.2.110 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:

A. Scope of practice: Practice by CNMs encompasses independently providing a full range of primary health care services for ~~clients~~women from adolescence to beyond menopause. These services include primary care; ~~sexual and reproductive health care: gynecologic health; and family planning services;~~ pre-conception care; care during pregnancy, childbirth, and the postpartum period; ~~and care of the normal newborn up to 6 weeks of age; and treatment of clients for sexually transmitted infections.~~ CNMs provide care for all individuals who seek midwifery care, inclusive of all gender identities and sexual orientations. CNMs-Midwives provide initial and ongoing comprehensive assessment, diagnosis, and treatment. They conduct physical examinations; independently prescribe, distribute, and administer dangerous drugs, devices, and contraceptive methods, and controlled substances in Schedules II through V of Sections 30-31-1 NMSA 1978, Controlled Substances Act; -admit, manage, and discharge clients; order and interpret laboratory and diagnostic tests; and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with clients/patients in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals, and birth centers. 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". A CNM who expands beyond the ACNM "core competencies" to incorporate new procedures that improve care for their clients/patients shall comply with the guidelines set out in the ACNM "standards for the practice of midwifery", standard VIII. Practice guidelines for home births should be informed by the most recent edition of the "ACNM home birth practice manual."

B. Prescriptive authority:

(1) Dangerous drugs: A CNM who prescribes, distributes, or administers a dangerous drug or device shall do so in accordance with Section 26-1 NMSA 1978, New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances:

(a) A CNM shall not prescribe nor distribute controlled substances in Schedule I of Section 26-1 1978 NMSA, Controlled Substances Act.

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

(c) A CNM who prescribes, distributes, or administers a controlled substance in Schedules II-V of Section 26-1 NMSA 1978, Controlled Substances Act, shall do so in accordance with the Controlled Substances Act.

(d) 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 or administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the Subparagraphs (a), (b) and (c) of Paragraph (2) of this subsection.

(e) A CNM may prescribe, provide samples of, and dispense any dangerous drug to a ~~client~~patient if, at the time of the prescription, the CNM has a valid CNM-client relationship ~~with the patient, as defined in 16.12.2.7 NMAC.~~ The relationship includes:

(i1) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is indicated and necessary for treatment of a condition when the CNM prescribes a dangerous drug or controlled substance;

(ii2) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is not contraindicated for the individual;

(iii3) the CNM provides a client with appropriate information on the proper dosage, route, frequency, and duration of a drug treatment;

(4iv) the CNM informs the client of possible untoward effects and side effects of a proposed treatment;

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

(6vi) the CNM provides for client education regarding a condition and the condition's treatment to enhance client compliance with plan of care;

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

(8viii) the CNM documents, at minimum, the indication, drug, and dosage of any prescribed drugs in a health record for the individual

(3) Prescriptions: A CNM may prescribe by telephone, by written prescription, by e-mail, or through an electronic health record (EHR) system. Controlled substances may only be prescribed by written or electronic prescription. 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.

(4) Labeling: When distributing a drug, a CNM shall label it with the client's name and date of birth; the date; instructions for use; and the CNM's name, address, and telephone number.

C. Guidelines for management of chronic pain or other conditions with controlled substances:
The treatment of chronic pain or other conditions with various modalities, including controlled substances such as opiates and opioids, is a legitimate practice when done in the usual course of CNM practice. The goal when treating chronic pain is to reduce or eliminate pain and also to avoid development of or contribution to addiction, drug abuse, and overdosing. Effective dosages should be prescribed, with both under- and over-prescribing to be avoided, using client/patient protection as a guiding principle. The CNM should provide control of the client/patient's pain for its duration, while effectively addressing other aspects of the client/patient's functioning, including physical, psychological, social, and work-related factors. A CNM may treat clients/patients with substance use disorder/addiction, physical dependence, or tolerance who have legitimate pain, however such clients/patients require very close monitoring and precise documentation.

(1) If, in a CNM's professional opinion, a client/patient is seeking pain medication for reasons that are not medically justified, the CNM is not required to prescribe controlled substances for the client/patient.

(2) When prescribing, dispensing, or administering controlled substances for management of chronic pain, a CNM shall:

(a) obtain a PMP report for the client/patient covering the preceding 12 months from the New Mexico board of pharmacy and any other state's report that is applicable and available;

(b) complete a history and physical examination and include an evaluation of the client/patient's psychological and pain status, any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of medical indications or contra-indications related to controlled substances;

(c) be familiar with and employ screening tools, as well as the spectrum of available modalities for therapeutic purposes, in the evaluation and management of pain, and consider an integrative approach to pain management in collaboration with other care providers, including but not limited to acupuncturists, chiropractors, doctors of oriental medicine, exercise physiologists, massage therapists, pharmacists, physical therapists, psychiatrists, or psychologists;

(d) develop a written individual treatment plan taking age, gender, and culture into consideration, with stated objectives by which treatment can be evaluated, such as degree of pain relief, improved physical and psychological function, or other accepted measures, and include any need for further testing, consultation, referral, or use of other treatment modalities as appropriate;

(e) discuss the risks and benefits of using controlled substances with the patient client or legal guardian and document this discussion in the medical record;

(f) make a written agreement with the patient-client or legal guardian outlining patient-client responsibilities, including a provision stating that the chronic pain client/patient will receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible;

(g) maintain complete and accurate records of care provided and drugs prescribed, including the indications for use, the name of the drug, quantity, prescribed dosage, and number of refills authorized;

(h) when indicated by the client/patient's condition, consult with health care professionals who are experienced in the area of the chronic pain or other conditions, though not necessarily specialists in pain control, both early in the course of long-term treatment and at least every six months;

(i) when treating a clients/patients with drug addiction, substance use disorder or physical dependence, use drug screening prior to and during the course of treatment to identify the drugs the patient client is consuming and compare the screening results with clients'/patients' self-reports (this should be included in the written agreement, see Subparagraph (f) above);

(j) note possible indications of drug misabuse by a clientpatient and take appropriate steps to further investigate and to avoid contributing to drug misabuse; such steps may include termination of treatment. Information about some of the indications may be available only through PMP reports. The following list of possible indications of drug misabuse is non-exhaustive:

- (i) receiving controlled substances from multiple prescribers;
- (ii) receiving controlled substances for more than 12 consecutive weeks;
- (iii) receiving more than one controlled substance analgesic;
- (iv) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone;
- (v) overutilization, including but not limited to early refills;
- (vi) appearing overly sedated or intoxicated upon presentation; or
- (vii) an unfamiliar patient-client requesting a controlled substance by specific name, street name, color, or identifying marks.

(k) comply with the opioid antagonist prescribing practices as set forth in the Pain Relief Act Section 24-2D-1, et.al NMSA1978.

D. Prescription Monitoring Program (PMP) Requirements: The department requires participation in the PMP to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals. Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting. A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's-client's medical record.

Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a patient-client for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient-client for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the clientpatient's medical record. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

(1) A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V:

- (a) for a period of four days or less; or
- (b) to a clientpatient in a nursing facility; or
- (c) to a clientpatient in hospice care.
- (d) or when prescribing, dispensing, or administering of: testosterone, pregabalin, lacosamide, ezogabine or stimulant therapy for pediatric clients/patients less than age 14.

(2) Upon review of a prescription monitoring report for a clientpatient, the practitioner shall identify, be aware, and document if a patient is currently:

- (a) receiving opioids from multiple prescribers;
- (b) receiving opioids and benzodiazepines concurrently;
- (c) receiving opioids for more than 12 consecutive weeks;
- (d) receiving more than one controlled substance analgesic;
- (e) receiving opioids totaling more than 90 morphine milligram equivalents per day;
- (f) exhibiting potential for ~~abuse or~~ misuse of opioids and other controlled substances, such as any of the following indicators:
 - (g) over-utilization;
 - (h) requests to fill early;
 - (i) requests for a controlled substance or specific opioid by specific name, street name; color, or identifying marks;
 - (j) requests to pay cash when insurance is available;
 - (k) receiving opioids from multiple pharmacies; or
 - (l) appearing overly sedated or intoxicated upon presentation.

(m) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone.

(3) Upon recognizing any of the above conditions described in Subparagraph (j) of Paragraph (2) of Subsection C of 16.11.2.110 NMAC, the practitioner, using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse~~-abuse~~, or overdose. These steps may involve counseling the ~~patient~~ client on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(4) Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a ~~patient~~ client's initial enrollment into the Opioid Treatment Program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in Schedule II-V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the ~~patient's~~ client's medical record.

E. **Immediate reporting:** A CNM must report within 48 hours to the division any neonatal or maternal mortality in clients/~~patients~~ for whom the provider has cared in the perinatal period in a setting other than a licensed health facility; this includes stillbirths. These will be reviewed by the division on a case-by-case basis for compliance with these CNM regulations.

F. **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;
- (5) "requirement for freestanding birth centers," 7.10.2 NMAC; and
- (6) "birthing workforce retention fund," 7.30.9 NMAC.

[16.11.2.110 NMAC - Rp, 16.11.2.110 NMAC, 11/24/2020]

16.11.2.124 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 of incompetence, unprofessional conduct, or other grounds listed in this section, pursuant to Subsection R of Section 24-1-3, NMSA 1978.

A. Grounds for action.

(1) **Incompetence.** A CNM who fails 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" is considered incompetent. 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 result 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 that is beyond the scope of CNM 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 or personnel 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 rule of the department;

- (j) failure to follow established procedure regarding controlled substances;
 - (k) failure to make or to 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 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 a non-licensed person; or
 - (o) failure to provide information requested by the department pursuant to this rule within 20 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 pursuant to 28-2-4(A)(1) NMSA. Conviction or having been found guilty, or entered into an agreed disposition, of a felony offense under applicable state or federal criminal law.~~
- (6) ~~Conviction or having been found guilty, 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 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 20 business days of the CNM 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 CNM who appears to have violated the rule for the practice of certified nurse-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) Failure to report to the department a change in contact information within 30 days of the change as set forth in Subsection (G) of 16.11.2.9 NMAC.
- (11) Non-compliance for requirements of CEs as determined by audit as set forth in Paragraph (2) of Subsection (B) of 16.11.2.10 NMAC.
- (12) 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 procedures set forth in Paragraphs (4) and (5) of Subsection (C) of 16.11.2.12+ NMAC.

C. Disciplinary proceedings: Disciplinary proceedings shall be conducted in accordance with Sections 61-1-1 through 61-1-31 NMSA 1978 of the Uniform Licensing Act (ULA). Disciplinary proceedings related to a CNM's treatment of a patient/client, for chronic pain or other conditions, with a controlled substance shall be conducted in accordance with Sections 24-2D-1 through 24-2D-6 NMSA 1978 of the Pain Relief Act, in addition to this rule.

- (1) Filing of a complaint:
 - (a) A written complaint must be filed with the division before a disciplinary proceeding may be initiated.
 - (i) A complaint is an allegation of a wrongful act(s) or omission(s).
 - (ii) An allegation of a wrongful act 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), as defined in the ULA, being issued by the department if a violation occurred or it may result in a dismissal of the

complaint if no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

(3) Notice of contemplated action.

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

(b) The director of the division, or her/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) The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative attorney of the department at any time prior to the hearing;

if a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval; the proposed stipulation and agreement does not divest the department of its authority to require a formal hearing or final approval, amendment, or rejection; if a settlement is not reached, a hearing shall be held.

(d) 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.

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

(f) 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 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.

(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 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 and placed in the CNM's licensure file. The department shall mail a copy of the written decision to the authority(ies) that license(s) the CNM as a registered nurse and shall report(s) the decision to the NPDB if the decision is to uphold the disciplinary action.

D. 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) For reinstatement of licenses for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, 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 is the controlling date, unless otherwise specified in the order. Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of revoked license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(3) Requests for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension. 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 suspended license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(4) 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.

[16.11.2.124 NMAC - Rp, 16.11.2.124 NMAC, 11/24/2020]

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

A. The board shall ~~may~~ be comprised of:

(1) ~~three up to four~~ New Mexico licensed CNMs, at least ~~two~~~~one~~ of whom ~~are~~ actively practicing midwifery;

(2) one New Mexico licensed midwife (LM) who is actively practicing midwifery;

(3) two members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;

(4) one actively practicing New Mexico licensed board-certified obstetrician-gynecologist physician; ~~and~~

(5) ~~one student nurse-midwife, who may continue to serve out their term following graduation; and~~

(5) one employee of the division.

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; ~~a student nurse-midwife who has completed their education is not eligible for a second term as the student member.~~ The department representative shall not be subject to term limits.

C. 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.

D. 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 and the department of finance administration rules, Section 2.42.2 NMAC.

E. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.132 NMAC - Rp, 16.11.2.132 NMAC, 11/24/2020]

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

[16.11.2.143 NMAC - Rp, 16.11.2.143 NMAC, 11/24/2020]

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 12/12/1967.

HSSD 76-2, Nurse Midwife Regulations For New Mexico, filed 1/20/1976.

HED-80-6 (HSD), Regulations Governing the Practice of Certified Nurse Midwives, filed 10/17/1980.

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives, filed 11/04/1991.

History of Repealed Material:

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) repealed 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) repealed 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 6/6/2019) repealed 11/24/2020.

Other History:

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives (filed 11/04/1991) was renumbered into first version of the New Mexico Administrative Code as 16 NMAC 11.2, Certified Nurse Midwives, effective 10/31/1996.

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) was replaced by 16.11.2 NMAC Certified Nurse Midwives, effective 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 8/15/2013) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 6/25/2019.

16.11.2 NMAC, Certified Nurse Midwives (filed 6/6/2019) replaced by 16.11.2 NMAC, Certified Nurse Midwives effective 11/24/2020.

AFFIDAVIT OF PUBLICATION

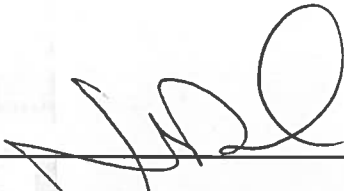
STATE OF NEW MEXICO

County of Bernalillo SS

NOTICE OF PUBLIC HEARING
IN THE STATE OF NEW MEXICO
DEPARTMENT OF REVENUE
ALTHOUGH THE PUBLIC
HEARING ON THE PROPOSED
REPEAL AND REPLACEMENT OF
RULE 16112 NM ACCERTIFIED

Wayne Barnard, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

01/16/2024



Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

16 day of January of 2024

PRICE \$328.64

Statement to come at the end of month.

ACCOUNT NUMBER 1060434

AUDREY RAYLEENE CRESPIN
Notary Public - State of New Mexico
Commission # 1140072
My Comm. Expires Apr 6, 2027

Audrey Rayleene Crespin

NEW MEXICO
DEPARTMENT OF
HEALTH

NOTICE OF PUBLIC
HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replacement of rule, 16.11.2 NMAC, "Certified Nurse-Midwives". The public hearing will be held on February 20, 2024 at 9:00 a.m. MDT via web video conference and telephone. The hearing will be conducted to receive public comments regarding the proposed repeal and replacement of the current rule, 16.11.2 NMAC, concerning the licensing, scope of practice, and disciplining of certified nurse-midwives (CNM).

The proposed replacement rule includes the following amendments and changes to the following rule parts:

1. Amended 16.11.2.7 NMAC Definitions to add definitions for audit, client, continuing education, continuing education unit, substance use disorder, and changing the definition of prescription monitoring program, and valid CNM-client relationship. The purpose of these definition changes is to provide a clear definition of what an audit is to a CNM and to provide a clear understanding to the CNM of what is expected of each licensee for the continuing education requirement. The purpose of the definition change to the prescription monitoring program is to remove any stigmatizing verbiage associated with addiction. The purpose of the change to the definitions to include substance use disorder is to use this phrase in the rule in relation to prescribing activities of a CNM and continuing education requirements, and it follows the National Institute of Mental Health definition. The purpose of the change to the definition of a valid CNM-client relationship is to move the description of the relationship from the definition further into the regulation in this section on the practice of midwives to more appropriately define the prescriptive practice.
2. Amended 16.11.2.9 NMAC Licensure to clear up confusion over the fact that multi-state license regulations have random license expiration dates and some of those licensees in other states do not have a New Mexico nursing license. The purpose of adding Paragraph (3) of Subsection B of 16.11.2.9 NMAC is to provide clarity on refunds on incomplete applications.
3. Amended Subparagraph (c) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC to specify that a new category of continuing education shall focus on health equity topics. The purpose of this amendment is to bring the New Mexico license regulation into line with national competency standards set forth by the American Midwifery Certification Board (AMCB).
4. Amended Item (i) of Subparagraph (d) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC to reflect the current requirements of the New Mexico CNM's contact hours per licensure period.
5. Added a new Section 16.11.2.10 NMAC Continuing Education to be as descriptive as possible to the licensee as to what is required for continuing education (CE) content. The purpose is to provide clarity to licensees as to what is included in a CE audit, and from what recognized approved bodies CE taken will be approved, and to outline to the licensee the duties in reporting CE to the program.
6. Amended Subsection A of 16.11.2.11 NMAC Practice of the Certified Nurse-Midwife "Scope of Practice" to change the description of those persons whom a CNM may provide services to from "women" and "patients" to "clients". The purpose of this section change is to clarify that CNMs can provide care to persons who seek midwifery care regardless of gender identity or sexual orientation.
7. Amended Subsection B of 16.11.2.11 NMAC Practice of the Certified Nurse-Midwife "Prescriptive Authority" to include the language for a CNM-client relationship previously set forth in the definitions section. The purpose of placement of the text in this section is because it is more appropriate in this section of the regulation dealing with the practice of the licensee.
8. Amended Subsection A of 16.11.2.12 NMAC "License, Denial, Suspension, or Revocation: Disciplinary Action. Grounds for action" to specify additional specific actions that may result in disciplinary action. The purpose of these additions is to clarify for licensees the sections of the regulation which non-compliance with may result in a disciplinary action.
9. Amended 16.11.2.13 NMAC Advisory Board to include additional members. The purpose of the changes is to provide more memberships for representatives who are currently practicing and to provide a specific seat on the board for a student who may remain on the board after graduation.

The purpose of the proposed repeal and replacement 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.

The legal authority authorizing the proposed rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, Subsections S and V of Section 24-1-3 NMSA 1978, and 24-1-4.1 NMSA 1978.

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/>.

Any interested member of the public may attend the hearing, and anyone may offer public comments on the proposed rule.

the denmons section. The purpose of the text in this section is because it is more appropriate in this section of the regulation dealing with the practice of the licensee. 8. Amended Subsection A of 16.11.2.12 NMAC "License, Denial, Suspension, or Revocation: Disciplinary Action. Grounds for disciplinary action" to specify additional specific actions that may result in disciplinary action. The purpose of these additions is to clarify for licensees the sections of the regulation which non-compliance with may result in a disciplinary action. 9. Amended 16.11.2.13 NMAC Advisory Board to include additional members. The purpose of the changes is to provide more memberships for representatives who are currently practicing and to provide a specific seat on the board for a student who may remain on the board after graduation.

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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/>.

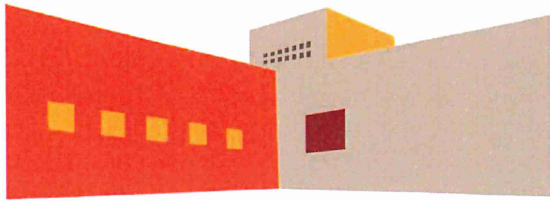
Any interested member of the public may attend the hearing and anyone may offer public comments on the proposed rule orally at the hearing. To access the hearing by telephone please call 1-505-312-4308, phone conference i.d. code 749241820 #. To access the hearing via internet: please go to <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>, enter the following meeting i.d. code and passcode where indicated on screen—meeting i.d. code 234 233 080 029, Passcode: ZoTViA, then click the "Join a meeting" button. All oral comments will be recorded.

Any person may submit written public comment concerning the rule amendments. Written comments may be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rules to the attention of:

Abigail Reese, PhD, CNM
Maternal Health Program Manager
Family Health Bureau/Public Health Division
2040 S. Pacheco (Colgate Building)
Santa Fe, New Mexico 87505
Abigail.reese@doh.nm.gov
(505) 231-6817

Mailed written comments must be received no later than 5:00 p.m. MDT on February 20, 2024, the day of the public hearing. Written comments may also be submitted to the email address shown above through 5:00 pm MDT on the date of the hearing. All written comments will be published on the agency website at <http://nmhealth.org/publication/regulation/> within 3 business days of receipt, and will be available at the Office of the New Mexico Department of Health, at the address above, 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 Christine Guillen by telephone at (505) 709-5538. The Department requests at least ten (10) days' advance notice to provide requested special accommodations.



NM Commission of Public Records
 1205 Camino Carlos Rey
 Santa Fe, NM 87507
 +505 4767912

Invoice

BILL TO

DOH - Public Health Division
 Maternal Health Program
 2040 S. Pacheco Street
 Santa Fe, NM 87505 US

INVOICE #	DATE	TOTAL DUE	DUE DATE	ENCLOSED
7338	01/18/2024	\$111.00	01/18/2024	

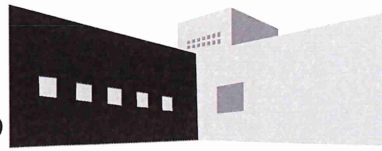
VOLUME XXXV **ISSUE** 1 **P.O. NUMBER** 66500-0000195483

DATE	DESCRIPTION	QTY	RATE	AMOUNT
01/16/2024	NM Register - 431902 Notice Of Public Hearing (16.11.2 NMAC repeal/replace), hearing date: 2/20/2024	37	3.00	111.00

Thank you for your business!

BALANCE DUE

\$111.00



Affidavit of Publication in New Mexico Register

I, Matthew Ortiz, certify that the agency noted on Invoice # 7338 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXXV, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 7338, and that Invoice # 7338 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.


Affiant:


Matthew Ortiz

Subscribed, sworn and acknowledged before me this 18th day of January, 2024.

Notary Public:

My Commission Expires:


2/19/2024

STATE OF NEW MEXICO
NOTARY PUBLIC
Pamela Anne Lujan Y Vigil
Commission No. 1056580
February 19, 2024

1205 Camino Carlos Rey | Santa Fe, NM 87507 | www.srca.nm.gov

Hon. Raúl Torrez
Attorney General

Hon. Joseph Maestas
State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Debra Garcia y Griego
Secretary, Department of Cultural Affairs

Robert E. Doucette Jr.
Secretary, General Services Department

Stephanie Wilson
State Law Librarian, Supreme Court Law Library



MICHELLE LUJAN GRISHAM
Governor

PATRICK M. ALLEN
Cabinet Secretary

VIA ELECTRONIC MAIL

January 17, 2024

Jared D. Najjar, Esq.
Virtue and Najjar, PC.
2204 Brothers Road,
Santa Fe, NM 87505
jnajjar@virtuelaw.com

Re: Hearing Officer Appointment, Rulemaking Hearing on the proposed Repeal and Replacement of 16.11.2 NMAC, Certified Nurse-Midwives


Dear Mr. Najjar:

Pursuant to NMSA 1978, § 9-7-6(E), I hereby appoint you to serve as the hearing officer to preside at the Department of Health's public hearing on February 20, 2024. This rulemaking hearing is scheduled for 9:00 a.m., and will be conducted remotely via Microsoft Teams online and by telephone.

The hearing will be conducted to receive public comment regarding the proposed repeal and replacement of 16.11.2 NMAC Certified Nurse-Midwives. All exhibits will be provided to you prior to the hearing.

Thank you for accepting this appointment.

Sincerely,

DocuSigned by:

BCCCB0A6564A457...
Patrick M. Allen
Cabinet Secretary

cc: Melinda L. Wolinsky, Assistant General Counsel

From: [Reese, Abigail, \(she/her/hers\), DOH](#)
To: [Woodward, Chris, DOH](#)
Subject: FW: Just a heads up from my team:
Date: Monday, February 15, 2024 3:30:19 PM
Attachments: [image002.png](#)
[image004.png](#)

From: Reese, Abigail, (she/her/hers), DOH
Sent: Wednesday, February 7, 2024 8:04 AM
To: Wolinsky, Melinda, DOH <Melinda.Wolinsky@doh.nm.gov>
Cc: Nardini, Katrina, DOH <Katrina.Nardini@doh.nm.gov>
Subject: RE: Just a heads up from my team:

Thanks. That's it so far.

From: Wolinsky, Melinda, DOH <Melinda.Wolinsky@doh.nm.gov>
Sent: Wednesday, February 7, 2024 8:01 AM
To: Reese, Abigail, (she/her/hers), DOH <Abigail.Reese@doh.nm.gov>
Cc: Nardini, Katrina, DOH <Katrina.Nardini@doh.nm.gov>
Subject: RE: Just a heads up from my team:

Hi Abby,

I will investigate and let you know. Thanks for the email.

Have you received any other comments?

Melinda

Melinda L. Wolinsky

Please note my new email address:
melinda.wolinsky@doh.nm.gov
Assistant General Counsel



Accredited since 2015

Office of General Counsel
1190 S. St. Francis Drive
Santa Fe, NM 87502
ph: (505) 470-2573
fax: (505) 827-2930
www.nmhealth.org

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From: Reese, Abigail, (she/her/hers), DOH <Abigail.Reese@doh.nm.gov>
Sent: Tuesday, February 6, 2024 5:04 PM
To: Wolinsky, Melinda, DOH <Melinda.Wolinsky@doh.nm.gov>
Cc: Nardini, Katrina, DOH <Katrina.Nardini@doh.nm.gov>
Subject: FW: Just a heads up from my team:

Hi Melinda,

Input from the BON re the CNM Rule. I don't think the ULA governs, except where we specifically reference it for disciplinary hearings, but please correct me if I am wrong about this.

Thanks,
Abby

From: Ferguson, Sheena, BON <Sheena.Ferguson@bon.nm.gov>
Sent: Tuesday, February 6, 2024 3:38 PM
To: Reese, Abigail, (she/her/hers), DOH <Abigail.Reese@doh.nm.gov>; Nardini, Katrina, DOH <Katrina.Nardini@doh.nm.gov>
Cc: Gerencer, Dawn, BON <Dawn.Gerencer@bon.nm.gov>
Subject: Just a heads up from my team:

On page 3, the statement that an incomplete application is null and void after six months is not consistent with the ULA.

(3) If the licensure process is not completed, the application becomes null and void six months after the date of application being received, and fees paid are not refundable.

16.11.2 NMAC

3

Sheena Ferguson, DNP, MSN, RN, FANA-I
Executive Director
New Mexico Board of Nursing
505-228-8644 (M)
Please text if I don't pick up right away
Sheena.Ferguson@bon.nm.gov

Physical Address:
6301 Indian School Rd NE
Albuquerque, New Mexico 87110

Affidavit of Notice to the Public

I, Melinda L. Wolinsky, the undersigned, on oath, swear and affirm that the Notice of the Public Hearing for the proposed repeal and replacement of 16.11.2 NMAC- Certified Nurse-Midwives, was provided to the public as identified below:

1. On January 16, 2024, I verified that the Notice of Public Hearing was electronically posted on the New Mexico Department of Health agency website at <https://www.nmhealth.org/about/asd/cmo/rules/>, in accordance with the State Rules Act at NMSA 1978, § 14-4-5.2.
2. On January 16, 2024, I verified that the Notice of Public Hearing was posted on the New Mexico Sunshine Portal website, in accordance with the State Rules Act at NMSA 1978, § 14-4-5.2.
3. On January 16, 2024, I emailed the Notice of Public Hearing to persons who have made a written request for notice from the agency of announcements addressing the subject of rulemakings and who have provided the agency an electronic mail address, in accordance with the State Rules Act at NMSA 1978, § 14-4-5.2. The list of persons who requested notice includes the following persons: Tim Gardner, tgardner@drmm.org; Marilyn Wolfe, MWolfe@drmm.org; Crystal Hodges, chodges@nmag.gov, Jennifer R. James, JrJames@salud.unm.edu, Westlee Painter, WestleeA.Painter@state.nm.us
4. No persons have provided a postal address to request written notice by postal mail.
5. On January 16, 2024, I emailed the Notice of Public hearing to the New Mexico Legislative Counsel Service, at lcsmail@nmlegis.gov, in accordance with the State Rules Act at NMSA 1978, § 14-4-5.2.
6. On January 16, 2024, I was informed by Abigail Reese, Maternal Health Program Manager, Family Health Bureau/Public Health Division that the Notice of Public Hearing was made available to the public at the Bureau's regular place of business.
7. On January 10, 2024, I submitted the Notice of Public Hearing to the Albuquerque Journal to be published on January 16, 2024.
8. On January 18, 2024, I verified that the Notice of Public Hearing was posted publicly at the Department of Health's Central Office, Runnel's Building front door, 1190 South St. Francis Drive, Santa Fe, NM.

FURTHER AFFIANT SAYETH NAUGHT.

Melinda L. Wolinsky
Melinda L. Wolinsky, Affiant

State of New Mexico }
County of Bernalillo }

SWORN TO and SUBSCRIBED before me on the 18th day of January, 2024, by Melinda L. Wolinsky.

Felicia Garcia
Notary Public

5/1/27
My commission expires

