

**NEW MEXICO DEPARTMENT OF HEALTH
RULEMAKING HEARING ON PROPOSED REPEAL AND REPLACEMENT OF
16.11.2 NMAC, CERTIFIED NURSE-MIDWIVES**

Public Hearing: Proposed Repeal and Replacement of 16.11.2 NMAC, Certified Nurse-Midwives.

Actions in Question: Repeal and Replacement of rule to conform with current law and for purposes of clarity.

Hearing Date: February 20, 2024

Report Date: March 19, 2024

REPORT OF HEARING OFFICER

A public hearing was held on Tuesday, February 20, 2024 beginning at 9:00 a.m. via Microsoft Teams and via telephone. The hearing was held for the purpose of considering a repeal and replacement of 16.11.2 NMAC, as noted above. Jared D. Najjar presided as Hearing Officer. The New Mexico Department of Health (the “Department”) was represented by Christopher D. Woodward, Acting General Counsel.

The proceeding was recorded via Microsoft Teams and hosted in that platform by Mr. Woodward. The original recording is in the possession of the Department, Office of General Counsel.

SUMMARY OF PROCEEDING

The Hearing Officer opened the proceeding by introducing himself and noting that the hearing was open to any interested member of the public. Notice of Public Hearing (the “Notice”) was published in the Albuquerque Journal and the New Mexico Register. The purpose of the hearing was to receive public comment regarding the proposed repeal and replacement of 16.11.2 NMAC, concerning the licensing, scope of practice, and disciplining of certified nurse-midwives (hereinafter “CNM”).

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

1. 16.11.2.7 NMAC adds definitions for audit, client, continuing education, continuing education unit, substance use disorder, and amends 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. 16.11.2.9 NMAC amendment clarifies 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. 16.11.2.9(C)(3)(c) NMAC amendment specifies 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. 16.11.2.9(C)(3)(d)(i) NMAC amendment reflects the current requirements of the New Mexico CNM's contact hours per licensure period.

5. New Section 16.11.2.10 NMAC was added to clarify 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. 16.11.2.11(A) NMAC amendment changes 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. 16.11.2.11(B) NMAC amendment includes 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 Hearing Officer explained that interested parties were given the opportunity to submit written comments concerning the proposed rule amendments via US mail and email. Written comments were accepted until 5:00pm on February 20, 2024. A free copy of the full text of the proposed rule amendments was available to the public on the Department's website. Further, pursuant to the Notice, individuals in need of special assistance or accommodations to attend or participate in the hearing were encouraged to contact the Department.

The Hearing Officer noted that the legal authority permitting the proposed amendments is found at Subsection E of Section 9-7-6, NMSA 1978, Subsection S and V of 24-1-3 NMSA 1978, and 24-1-4.1 NMSA 1978.

Following the Hearing Officer's opening remarks, counsel for the Department introduced the Department's Exhibits and moved for their admission into the record. Mr. Woodward presented seven exhibits on behalf of the Department, all of which were admitted with no objection. The exhibits are as follows:

DOH Exhibit No. 1: Notice of Rule Hearing

DOH Exhibit No. 2: Proposed Rule Changes

DOH Exhibit No. 3: Affidavit of Notice to the Public

DOH Exhibit No. 4: Affidavit of Publication of Notice of Hearing in the Albuquerque Journal

DOH Exhibit No. 5: Affidavit of Publication of Notice of Hearing in the New Mexico Register

DOH Exhibit No. 6: Letter Appointing Hearing Officer

DOH Exhibit No. 7: Written Public Comment

Subsequently, Abigail Reese, PhD, CNM, the Maternal Health Program Manager for the Family Health Bureau/Public Health Division provided comment on behalf of the Department. She explained the content and reasoning behind the proposed rule amendments and noted that a repeal was necessary for purposes of clarity.

The Hearing Officer then announced that members of the public would be given an opportunity to comment on the proposed rule amendments. There were no members of the public who opted to comment.

Counsel for the Department, Mr. Woodward, then addressed a written comment proffered by the Board of Nursing. Specifically, the Board of Nursing noted its concerns that the rule is inconsistent with the Uniform Licensing Act because it provides that if licensure is not completed within six months, the application becomes null and void. In response, Mr. Woodward noted that the Uniform Licensing Act does not apply in general to CNM licensees, and instead argued that under 16.11.2.11(C) NMAC it merely notes that disciplinary proceedings shall be conducted in accordance with the ULA. The Hearing Officer agrees.

Nevertheless, Mr. Woodward noted that the Department recognized the concerns raised by the Board of Nursing and in an effort to ensure consistency and uniformity, the Department agreed to amend the six month time period to one year consistent with 61-1-3.5 NMSA 1978.

There were no opponents of the proposed amendments in attendance.

The Hearing Officer then announced again that, as reflected on the Notice, additional written comment could be submitted via email until 5:00pm on the day of the hearing. No additional written comments were submitted.

RECOMMENDATION

Repealing and replacing the current rule is necessary when a rule has been substantially rewritten and restructured. The proposed amendments are consistent with current state law and they clarify 16.11.2 NMAC.

Given the above, I recommend that 16.11.2 NMAC be repealed and replaced with the amendments presented at the hearing. This recommendation is based on my review of the written comment submitted, and the testimony presented at the hearing.

Respectfully submitted,

Jared D. Najjar
Hearing Officer