

2020 NOV 13 PM 4: 01

NMAC Transmittal Form



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

Issuing agency name and address: Agency DFA code:

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

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

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):

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

Are there any materials incorporated by reference?
Yes No

Please list attachments or Internet sites if applicable.

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

Specific statutory or other authority authorizing rulemaking:

The regulation set forth herein is promulgated by the acting secretary of the New Mexico department of health, pursuant to the authority under Subsection E of Section 9-7-6 NMSA 1978; Subsection S and Subsection V of 24-1-3 NMSA 1978, and Section 24-1-4.1 NMSA 1978.

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

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Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

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

Please see the attached Statement of Reasons for Adoption of Proposed Repeal/Replacement of Certified Nurse-Midwives, Rule 16.11.2 NMAC.

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

Name:

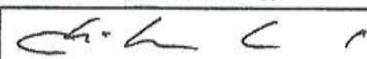
Chris D. Woodward

Check if authority has been delegated

Title:

Acting General Counsel

Signature: (BLACK ink only)



Date signed:

11/13/20

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**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH**

**IN THE MATTER OF PROPOSED
ADOPTION OF REPEAL AND
REPLACEMENT OF DEPARTMENT
RULE PART 16.11.2 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF PROPOSED
REPEAL/REPLACEMENT OF CERTIFIED NURSE-MIDWIVES**

Billy J. Jimenez, Acting Cabinet Secretary for the New Mexico Department of Health, following a public hearing conducted on October 26, 2020, on the proposed repeal and replacement of the Certified Nurse-Midwives rule, part 16.11.2 NMAC, hereby adopts the proposed repeal and replacement rule. This decision is based on the entire record in this matter, which includes a recording of the hearing and the Report and Recommendation of the Hearing Officer, Craig T. Erickson, Esq., dated November 12, 2020.

In further support of this action the Secretary finds the following:

1. The Department of Health is authorized to repeal promulgated regulations and to promulgate regulations as may be necessary to carry out the duties of the Department and its divisions. NMSA 1978, Section 9-7-6(E), and to enact this rule pursuant Subsection S and Subsection V of 24-1-3 NMSA 1978, and Section 24-1-4.1 NMSA 1978.
2. In accordance with NMSA 1978, Section 14-4-5.2, notice of the public hearing for the proposed rule adoption was published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on September 15, 2020.

3. In accordance with NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule changes was also published in the Albuquerque Journal newspaper on September 15, 2020.
4. In accordance with NMSA 1978, Section 14-4-5.2, prior to the date of the rule hearing, notice of the public hearing for the proposed rule changes was also posted to the agency website at <http://www.nmhealth.org>, as well as to the NM Sunshine Portal at <http://www.newmexico.gov>.
5. By a letter dated September 1, 2020, Cabinet Secretary Kathyleen M. Kunkel designated Mr. Erickson to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed repeal and replacement rule.
6. A public rule hearing was held in Albuquerque, New Mexico via the Internet-based video conference platform Cisco WebEx and by telephone on October 26, 2020 pursuant to NMSA 1978, Section 9-7-6(E).
7. Members of the public were afforded an opportunity to comment orally on the proposed rules at the hearing, and in writing prior to the hearing and through the close of business on October 26, 2020.
8. The purpose of the proposed repeal and replacement rule is to adopt amendments to 16.11.2 NMAC which provide changes and amendments to various sections of the current rule concerning the licensing, scope of practice and disciplining of certified nurse midwives. The purpose of the replacement rule is to incorporate the seven amendments made to 16.11.2. NMAC. The purpose of the first amendment to the scope of practice for a certified nurse midwife is to include treatment of “clients” replacing the term “male

partners” for sexually transmitted infections. This amendment’s purpose is to allow for treatment of males for sexually transmitted infections who are not partners of female clients of the certified nurse midwife, thereby expanding health care access. The purpose of the second amendment is to add definitions for electronic professional licensing management system, lapsed license, opioid antagonist, and reactivation and reinstatement which were necessary to provide a clear distinction of potential processes to a license. The purpose of the third amendment is to clarify the timing of when renewal applications are due. The purpose of the fourth amendment is to specify that electronic prescribing for controlled substances is legal. The purpose of the fifth amendment is to state that the CNM shall comply with opioid antagonist prescribing practices as set forth in the New Mexico Pain Relief Act, NMSA 1978 24-2D-2. The purpose of the sixth amendment is to add a requirement for immediate reporting of a neonatal or maternal mortality for those CNMs who work in a setting other than a licensed health facility including stillbirths. The purpose of the seventh amendment is to clarify the type of convictions or agreed dispositions that may be considered grounds for disciplinary action or action against a license. The purpose of the repeal of 16.11.2 NMAC is 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.

9. Written comments from members of the public were received prior to the rule hearing and oral comments from the public were received during the rule hearing. No additional written comments were received from the public after the close of business on

October 26, 2020. The Hearing Officer sought and received additional information from the Department before and at the hearing regarding the purpose for the proposed repeal and replacement of 16.11.2 NMAC.

10. Written public comments were considered and adopted by the department. The Department also made certain clerical, clarifying and formatting changes to be consistent throughout the rule. These facts are described in the November 12, 2020 Report and Recommendation from the Hearing Officer to the Acting Cabinet Secretary Billy J. Jimenez.

11. Changes between the rule draft that was offered at the rule hearing and the final rule are as stated in the record of the hearing and as described in the Hearing Officer's Report and Recommendation, the recommendations of which are adopted herein by the Acting Cabinet Secretary Billy J. Jimenez.

11. The Acting Cabinet Secretary has familiarized himself with the rulemaking record, including the Report and Recommendation of the Hearing Officer, and finds that the Hearing Officer has appropriately considered the entire record and substantive comments made through public comments, and finds that the recommendations of the Hearing Officer are appropriate.

12. The Acting Cabinet Secretary hereby adopts the Hearing Officer's recommendations concerning the proposed repeal and replacement to the rule.

13. The Acting Cabinet Secretary finds that the rule promulgation process met the requirements of the State Rules Act and the New Mexico Attorney General's Default Procedural Rule for Rulemaking at 1.24.25 NMAC.

14. The Acting Cabinet Secretary finds that the proposed repeal and replacement of 16.11.2 NMAC, as recommended by the Hearing Officer, is appropriate and consistent with the authorizing law, and accordingly, the proposed repeal and replacement of 16.11.2 NMAC is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH



Billy J. Jimenez, Acting Cabinet Secretary

11/13/20

Date

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The New Mexico Department of Health approved the repeal of its rule 16.11.2 NMAC - Certified Nurse- Midwives (filed 6/25/2019) and replaced it with 16.11.2 NMAC - Certified Nurse-Midwives (adopted on 11/13/2020), and effective 11/24/2020.