

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS
PART 11 LACTATION CARE PROVIDERS

16.12.11.1 ISSUING AGENCY: New Mexico Board of Nursing.
[16.12.11.1 NMAC - Rp, 16.12.11.1 NMAC, 12/13/2022]

16.12.11.2 SCOPE: All lactation care providers licensed by the New Mexico board of nursing as licensed lactation care providers.
[16.12.11.2 NMAC - Rp, 16.12.11.2 NMAC, 12/13/2022]

16.12.11.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Lactation Care Provider Act, Sections 61-3B-1 to -7 NMSA 1978.
[16.12.11.3 NMAC - Rp, 16.12.11.3 NMAC, 12/13/2022]

16.12.11.4 DURATION: Permanent.
[16.12.11.4 NMAC - Rp, 16.12.11.4 NMAC, 12/13/2022]

16.12.11.5 EFFECTIVE DATE: December 13, 2022 unless a later date is cited at the end of a section.
[16.12.11.5 NMAC - Rp, 16.12.11.5 NMAC, 12/13/2022]

16.12.11.6 OBJECTIVE: To promote, preserve and protect the public health, safety and welfare of the citizens of the state by establishing standards for licensure and regulation of licensed lactation care providers in New Mexico.
[16.12.11.6 NMAC - Rp, 16.12.11.6 NMAC, 12/13/2022]

16.12.11.7 DEFINITIONS: This rule incorporates the definitions provided in the Lactation Care Provider Act, Section 61-3B-2 NMSA 1978.

A. Definitions beginning with the letter A: “act” means the Lactation Care Provider Act, Sections 61-3B-1 to 7 NMSA 1978.

B. Definitions beginning with the letter B: [RESERVED]

C. Definitions beginning with the letter C:

(1) “CE” means continuing education.

(2) “CLC” means certified lactation counselor.

(3) “Committee” means the lactation care provider committee appointed by the New Mexico board of nursing pursuant to the act.

D. Definitions beginning with the letter D: [RESERVED]

E. Definitions beginning with the letter E:

(1) “Eligible jurisdiction” means:

(a) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.16.4.8 NMAC; and

(b) any foreign country included in 16.16.4.9 NMAC.

(2) “Expedited license” is a one-year provisional license that confers the same rights, privileges and responsibilities as regular licenses issued by a board.

F. Definitions beginning with the letter F: [RESERVED]

G. Definitions beginning with the letter G: “good standing” means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license or registration.

H. Definitions beginning with the letter H: [RESERVED]

I. Definitions beginning with the letter I:

(1) “IACET” means international association for continuing education and training.

(2) “IBCLC” means International board certified lactation consultant.

J. Definitions beginning with the letter J: “jurisdiction” has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

K. Definitions beginning with the letter K: [RESERVED]

L. Definitions beginning with the letter L: [RESERVED]

(1) “LEARRC” means lactation education accreditation and approval review committee.

(2) “Licensing fee” has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

(3) “LLCP” means licensed lactation care provider.

M. Definitions beginning with the letter M: “military service member” has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978..

N. Definitions beginning with the letter N: “NCCA” means national commission for certifying agencies.

O. Definitions beginning with the letter O: [RESERVED]

P. Definitions beginning with the letter P: [RESERVED]

Q. Definitions beginning with the letter Q: [RESERVED]

R. Definitions beginning with the letter R: [RESERVED]

S. Definitions beginning with the letter S: [RESERVED]

T. Definitions beginning with the letter T: [RESERVED]

U. Definitions beginning with the letter U: [RESERVED]

V. Definitions beginning with the letter V: “veteran” has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978..

W. Definitions beginning with the letter W: [RESERVED]

X. Definitions beginning with the letter X: [RESERVED]

Y. Definitions beginning with the letter Y: [RESERVED]

Z. Definitions beginning with the letter Z: [RESERVED]

[16.12.11.7 NMAC - Rp, 16.12.11.7 NMAC, 12/13/2022]

16.12.11.8 NON-LICENSED PRACTICE; EXCEPTIONS:

A. Licensure with the board is not required to provide lactation care and services in the state of New Mexico; provided, however, that any individual not licensed by the board as a licensed lactation care provider may not use the title “licensed lactation care provider” (LLCP) or otherwise imply to the public that they are licensed in New Mexico by the board as a licensed lactation care provider under the act.

B. Nothing in the act or these rules shall be construed to prevent the practice of lactation care and services by health care professionals, volunteers, students, interns, or other persons.

[16.12.11.8 NMAC - Rp, 16.12.11.8 NMAC, 12/13/2022]

16.12.11.9 APPROVED CERTIFICATIONS; PETITION TO APPROVE:

A. The following certifications conferred by a program accredited by a nationally or internationally recognized accrediting agency are recognized by the board and approved for licensure requirements:

(1) Certified lactation counselor (CLC) accredited by the academy of lactation policy and practice.

(2) International board certified lactation consultant (IBCLC) accredited by the international board of lactation consultant examiners.

B. Petition to approve certification.

(1) An individual who holds a certification as a lactation care provider conferred by a certification program accredited by a nationally or internationally recognized accrediting agency that is not an approved certification listed above may petition the board and request approval of the certification.

(2) The board shall review the petition and determine whether the certification sufficiently substantiates adequate education, didactic and clinical preparedness, continuing education requirements, and other factors that establish competency.

(3) The decision of the board is discretionary and shall not be subject to review or binding on any future petition.

[16.12.11.9 NMAC - Rp, 16.12.11.9 NMAC, 12/13/2022]

16.12.11.10 FEES: Payment of fees will be accepted in the form specified by the board. Fees are not refundable.

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| A. | Initial licensure or expedited licensure | \$60.00. |
| B. | Renewal | \$40.00. |
| C. | Reinstatement and renewal of lapsed license | \$60.00. |
| D. | Lactation care provider list | \$100.00 |
| E. | Initial certificate military personnel, spouse, dependent, or veteran | \$0 |
| F. | First renewal of certificate military personnel, spouse, dependent, or veteran | \$0 |

[16.12.11.10 NMAC - Rp, 16.12.11.10 NMAC, 12/13/2022]

16.12.11.11 LICENSURE REQUIREMENTS:

- A.** Requirements for licensure:
- (1) Be at least 18 years of age.
 - (2) Hold an approved certification as a lactation care provider.
 - (3) Complete the required board application form in the specified deadline and remit the required fee. The board may require additional information in the application, including demographics, information on practice status, and education; which will be for data collection purposes only and shall not affect approval of the application.
 - (4) Submission of applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the New Mexico department of public safety to conduct a state criminal history check. If a criminal background check reveals a conviction or other history that may be cause for denial of the license, the board may request additional documents or other information be submitted to determine whether a license should be granted.
 - (5) Only complete applications should be submitted to the board. An incomplete application may be denied.
- B.** Expedited licensure:
- (1) The board will issue an expedited license to a qualified applicant based on prior licensure in an eligible jurisdiction other than New Mexico upon an applicant's submission of a complete application containing all of the following:
 - (a) a completed and signed application form;
 - (b) proof of current licensure in an eligible jurisdiction;
 - (c) proof of good standing for the license held by the applicant in an eligible jurisdiction;
 - (d) submission of fingerprints and other information necessary for a state and national background check; and
 - (e) payment of the required application fee.
 - (2) An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection B Section 61-3B-4 NMSA 1978, including documentation from third parties.
 - (3) Upon submission of a complete application, the board's staff shall process the application and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3B-6 NMSA 1978.
 - (4) If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3B-6 NMSA 1978:
 - (a) the license may not be issued within 30 days of submission of the complete application;
 - (b) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and
 - (c) the board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.
 - (5) Renewal of expedited licenses:
 - (a) A licensee holding an expedited license may apply for license renewal beginning 60 days prior to expiration of the expedited license, as provided by the board's rules.
 - (b) Upon renewal, an expedited license shall become a regular license.
 - (6) Eligible and ineligible jurisdictions:
 - (a) The board will accept expedited license applications on the basis of prior licensure in any jurisdiction within the United States without exception.

(b) The board will accept expedited license applications on the basis of prior licensure in the following jurisdictions outside the United States: Canada.

C. Expedited licensure for military service members and veterans:

(1) The board will issue an expedited license to an applicant who is a military service member or veteran based on prior licensure in a jurisdiction other than New Mexico upon the applicant's submission of a complete application containing all of the following:

- (a) a completed and signed application form;
- (b) proof of current licensure in another jurisdiction;
- (c) proof of good standing for the applicant's out of state license;
- (d) submission of fingerprints and other information necessary for a state and national background check; and
- (e) Submission of the following documentation:
 - (i) for military service member: a copy of military orders;
 - (ii) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
 - (iii) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
 - (iv) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
 - (v) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

(2) An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection B Section 61-3B-4 NMSA 1978, including documentation from third parties.

(3) Upon submission of a complete application, the board's staff shall process the application and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978.

(4) If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978:

- (a) the license may not be issued within 30 days of submission of the complete application;
- (b) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and
- (c) the board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.

(5) Duration of military expedited licenses:

(a) The first licensure period will be for one year from the issuance of the license. Continuing education will be prorated.

(b) The first renewal period will be for two years from the date of the first expiration date of the first licensure period. Military service members and veterans shall submit all required applications and continuing education for renewal.

(6) Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

D. Requirements for renewal of license:

(1) Complete the required renewal application form in the specified deadline and remit the required fee to the board. The board may require additional information in the application, including demographics, information on practice status, and education; which will be for data collection purposes only and shall not affect the application approval. Renewal applications should be submitted at least 30, but no more than 60 days prior to the expiration of the license.

(2) Maintain a current approved certification recognized by the board.

(3) Complete all required continuing education hours and indicate compliance on the renewal application.

(4) Licensees mobilized for active duty, other than training, are not required to renew their license while deployed on active duty and will not be subject to a reinstatement fee. A copy of the mobilization

orders must be submitted to the board office prior to expiration of the license or within 30 days upon return from active duty.

(5) A renewal notice shall be sent to the licensee at least six weeks prior to the end of the renewal month. Failure to receive notice renewal shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

E. Requirements for reinstatement of license:

(1) Complete any required reinstatement form and remit the required fee to the board.

(2) Maintain a current approved certification recognized by the board.

(3) A reinstated license shall be valid for two years.

F. Requirement to maintain current name and address:

(1) A licensee shall report to the board in writing or other method accepted by the board, of any change of name, or change in mailing address. Failure to update the board of any name or address change within thirty days shall be a violation of the board rules and may result in disciplinary action.

(2) A licensee must use their name as it appears on the current license until a name change is processed by the board. Name change can be submitted with license renewal or at any time by submitting a copy of the legal document required for name change (only recorded marriage certificate, divorce decree or court order accepted).

[16.12.11.11 NMAC - Rp, 16.12.11.11 NMAC, 12/13/2022]

16.12.11.12 CONTINUING EDUCATION:

A. Introduction: Pursuant to the provision of the Lactation Care Provider Act, the board prescribes the following minimum requirements for continuing education (CE) to be met by each licensee to protect the health and well-being of the public and to promote current lactation care and services knowledge and practice. Continuing education is one of the most important responsibilities of the licensed lactation care provider and is a lifelong process. The primary responsibility for continuing education rests with the individual licensee. A diversity of lactation care-related learning activities are recommended to enhance the scope of professional development.

B. Requirements:

(1) 24 contact hours of approved continuing education must be successfully completed within the 24 months immediately preceding expiration of the license.

(2) Continuing education obtained for a national or international approved certification recognized by the board may be accepted toward the contact hour requirement if completed during the renewal period.

C. A contact hour means 50 to 60 minutes of an organized learning experience relevant to lactation care and services, approved by one of the following:

(1) international board of lactation consultant examiners;

(2) academy of lactation policy and practice;

(3) lactation education accreditation and approval review committee (LEARRC);

(4) international association for continuing education and training (IACET);

(5) national commission for certifying agencies (NCCA).

D. Failure to meet the CE requirements may result in the license not being renewed, reactivated and reinstated, or other disciplinary action.

E. Licensees who hold another license with the board may apply continuing education credit hours completed for the other license to the lactation care provider license CE requirements so long as the continuing education would otherwise be approved by these rules. No more than 12 continuing education hours may count toward both licenses.

F. Records: Licensees are responsible for maintaining their continuing education records and for keeping the certificates of verification of attendance of CE activities for at least two years after the license is renewed. Copies of certificates must be submitted to the board office upon request. Failure to maintain or provide such records to the board may be grounds for discipline.

[16.12.11.12 NMAC - Rp, 16.12.11.12 NMAC, 12/13/2022]

16.12.11.13 STANDARD OF PRACTICE:

A. Licensees shall identify themselves by name and certification, and shall provide their license number if requested.

B. The licensee shall practice in accordance with the Lactation Care Provider Act and respective scope of practice within the approved certification recognized by the board.

C. The licensee may assume specific functions and perform specific procedures which are beyond basic lactation care provider preparation with demonstration of appropriate education and level of competence, provided the knowledge and skills required to perform the function and procedure emanates from a recognized body of knowledge and practice, which may result in a certification, and so long as the function or procedure is not prohibited by law.

D. The licensee shall maintain individual competency in lactation care practice, recognizing and accepting responsibility for individual actions and judgments.

E. The licensee shall have knowledge of, and function within, the laws and rules governing the practice.

F. The licensee acts to safeguard the patient or client when her care and safety are affected by incompetent, unethical, or illegal conduct of any person, and shall timely report the conduct to the board and, where appropriate, the recognized national and international certifying organizations and law enforcement.

G. The licensee shall recognize the dignity and rights of others regardless of social or economic status and personal attributes; and shall conduct practice with respect for human dignity, unrestricted by considerations of age, race, religion, sex, sexual orientation, gender identity, national origin, disability or nature of the patient or client health.

H. The licensee safeguards the individual right to privacy by judiciously protecting information of a confidential nature.

I. The licensee shall not advertise their professional services in a manner that misrepresents facts or creates unjustified or unreasonable expectations about lactation care and services or the results of the licensed lactation care provider.

[16.12.11.13 NMAC - Rp, 16.12.11.13 NMAC, 12/13/2022]

16.12.11.14 DICLIPLINARY PROCEEDINGS:

A. Authority: The board may deny, revoke, or suspend a license held or applied for under the Lactation Care Provider Act; or reprimand or place a license on probation with conditions on the grounds stated in Section 61-3B-6 NMSA 1978.

B. For the purpose of Section 61-3B-6 NMSA 1978, “incompetence” is defined as follows: In performing lactation care and service functions, whether direct patient care or the administration or management of that care, a licensee is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other licensees of the same certification status and required by the generally accepted standards, of the profession including those standards set forth in these rules. The failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient or client or to the public from the act or omission or series of acts or omissions.

C. For the purpose of Section 61-3B-6 NMSA 1978, “unprofessional conduct” includes, but is not limited to, the following:

(1) dissemination of a patient or client’s health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or organization policy from disclosure;

(2) falsifying or altering patient or client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(3) misappropriation of money, drugs or property;

(4) obtaining or attempting to obtain any fee for patient or client services for one’s self or for another through fraud, misrepresentation, or deceit;

(5) aiding, abetting, assisting or hiring an individual to violate the lactation care provider act or duly promulgated rules of the board;

(6) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of lactation care and services;

(7) obtaining or attempting to obtain a license to practice lactation care and services for one’s self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure process;

(8) failure to report a licensee who is suspected of violating the New Mexico Lactation Care Provider Act or rules;

(9) intentionally engaging in sexual contact with or toward a patient or client in a manner that is commonly recognized as outside the scope of practice of the individual licensee;

(10) abandonment, which occurs when the licensee has accepted an assignment to provide care, service, or treatment to a patient or client, thus establishing a professional relationship, and then abruptly severed the relationship without reasonable notice provided to the patient or client; and distinguished from contractual disagreements, termination, or other employment issues;

(11) engaging in the practice of lactation care and services when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

(12) committing acts which constitute grounds for disciplinary action pursuant to Paragraph (1) and (2) of Subsection A of Section 61-3B-6 NMSA 1978 where the conviction arises from employment as a lactation care provider, Paragraph (3) and (4) of Subsection A of Section 61-3B-6 NMSA 1978 where the intemperance, addiction, incompetence or unfitness has manifested itself during the course of employment as a lactation care provider in a fashion which is contrary to the provision of good health care, and Paragraph (6) of Subsection A of Section 61-3B-6 NMSA 1978;

(13) practice which is beyond the scope of licensure;

(14) verbally or physically abusing a patient, client or colleague;

(15) failure to maintain appropriate professional boundaries which may cause harm to the patient;

(16) failure to comply with any other requirement provided by these rules.

[16.12.11.14 NMAC - Rp, 16.12.11.14 NMAC, 12/13/2022]

16.12.11.15 ADVISORY COMMITTEE:

A. Pursuant to Section 61-3B-3 NMSA 1978, the board may appoint a lactation care provider advisory committee to assist the board in regulating the practice of lactation care. The committee shall assist and advise the board in the review of issues related to the practice of lactation care.

B. The committee shall include a minimum of five, and no more than ten, members. The committee is intended to represent the diversity of the state and the profession, and shall include, at minimum:

(1) a member of the board;

(2) a certified lactation counselor;

(3) a international board certified lactation consultant; and

(4) a public member that is not a licensed or certified lactation care provider.

C. The committee shall review applications for initial licensure, make recommendations to the board, and perform any other duties as requested or directed by the board.

[16.12.11.15 NMAC - Rp, 16.12.11.15 NMAC, 12/13/2022]

HISTORY OF 16.12.11 NMAC: [RESERVED]

History of Repealed Material:

16.12.11 NMAC, Lactation Care Providers, filed 6/28/2018 - Repealed effective 12/13/2022.

Other History:

16.12.11 NMAC, Lactation Care Providers, filed 6/28/2018 was replaced 16.12.11 NMAC, Lactation Care Providers, effective 12/13/2022.