

**TITLE 7           HEALTH**  
**CHAPTER 29   PRIMARY AND RURAL HEALTH CARE SERVICES**  
**PART 5           CERTIFICATION OF COMMUNITY HEALTH WORKERS**

**7.29.5.1           ISSUING AGENCY:** New Mexico Department of Health.  
[7.29.5.1 NMAC - N, 1/30/15]

**7.29.5.2           SCOPE:** This rule applies to any person seeking to practice as a certified community health worker in the state of New Mexico.  
[7.29.5.2 NMAC - N, 1/30/15]

**7.29.5.3           STATUTORY AUTHORITY:** These rules are promulgated pursuant to the following statutory authorities: 1) the Department of Health Act, Subsection E of Section 9-7-6 NMSA 1978, which authorizes the secretary of the department of health to "...make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions," and; 2) the Community Health Workers Act, Sections 24-30-1 through 24-30-7 NMSA 1978, which authorizes the department to adopt regulations to carry out the provisions of the act.  
[7.29.5.3 NMAC - N, 1/30/15]

**7.29.5.4           DURATION:** Permanent.  
[7.29.5.4 NMAC - N, 1/30/15]

**7.29.5.5           EFFECTIVE DATE:** January 30, 2015, unless a later date is cited at the end of a section.  
[7.29.5.5 NMAC - N, 1/30/15]

**7.29.5.6           OBJECTIVE:** The objective of this rule is to implement the Community Health Workers Act. This rule governs the voluntary certification of community health workers (CHWs) in New Mexico.  
[7.29.5.6 NMAC - N, 1/30/15]

**7.29.5.7           DEFINITIONS:**

**A.           "Action against a certificate"** means any formal action taken by the department that adversely affects certification status, including but not limited to denial of initial certification or re-certification, suspension or revocation or a certificate, probation or reprimand.

**B.           "Applicant"** means an individual applying for community health worker certification or recertification.

**C.           "Board"** means the board of certification of community health workers established under these rules.

**D.           "Certificate"** means the document issued by the department to qualified applicants who have successfully completed the application process for certification as community health workers.

**E.           "Certification"** means the voluntary process by which the department grants recognition and use of a credential to individuals who are eligible to practice as certified community health workers.

**F.           "Certified community health worker" or "CCHW"** means a community health worker to whom the department has issued a certificate to practice as a certified community health worker.

**G.           "Community health worker" or "CHW"** means a public health worker, also known as a tribal community health representative or a promotora, who applies an understanding of the experience, language, and culture of the populations that the individual serves and who provides services aimed at optimizing individual, family and community health outcomes.

**H.           "Continuing education"** means courses or training designed to develop and enhance knowledge, skills, and professional development to ensure that CCHWs are up to date with current practices in the field.

**I.           "Conviction"** means a plea or adjudication of guilt, a plea of nolo contendere, or an Alford plea, and does not include a conditional discharge or deferred adjudication that results in dismissal of a charge.

**J.           "Core competencies"** means a combination of qualities, practical skills and knowledge, defined by the department as essential to the provision of services by community health workers, demonstration of which is required for certification.

**K.           "Department"** means the department of health.

**L.           "Recertification"** means a renewal of certification.

**M. “Scope of practice”** means the roles and related tasks performed by CCHWs in the provision of services, including the knowledge, skills and attributes needed to perform work-related functions, as defined by the department.

**N. “Secretary”** means the secretary of the department of health.  
[7.29.5.7 NMAC - N, 1/30/15]

#### **7.29.5.8 BOARD OF CERTIFICATION OF COMMUNITY HEALTH WORKERS:**

##### **A. Board membership:**

(1) The board shall be comprised of nine members who are residents of New Mexico, appointed by the secretary, and shall include:

(a) three currently practicing CHWs, including at least one tribal community health representative;

(b) the secretary or the secretary’s designee, who shall serve as chair of the board; and

(c) five additional members that the secretary shall endeavor to appoint from community health stakeholders including but not limited to health care providers, tribal representatives, individuals from institutions of higher learning, or members of the community from various geographic regions of the state.

(2) Members of the board other than the department’s representative shall serve for staggered terms of four years. The secretary shall appoint to the initial board three members to a four-year term, three members to a three-year term, and two members to a two-year term. Each member shall hold office until his or her successor is appointed.

(3) Board members shall be reimbursed as provided for in the Per Diem and Mileage Act, Section 10-8-1 *et seq.* NMSA 1978 and shall receive no other compensation, perquisite or allowance.

**B. Meetings:** The board shall convene at least once per quarter at the call of the chair and as frequently as reasonably necessary to review and make recommendations regarding the CHW certification process.

(1) Meetings shall be conducted in accordance with the Open Meetings Act, Section 10-15-1 through 10-15-4 NMSA 1978. A simple majority of the members of the board shall constitute a quorum for the purpose of transacting official business.

(2) Meeting arrangements and attendance requirements shall be determined by the board. The board shall recommend to the secretary removal of board members for non-participation or any other good cause.

**C. Duties and responsibilities:** The board shall advise the secretary on the implementation of standards, guidelines, and requirements relating to the training and regulation of persons seeking certification or practicing as CCHWs.

(1) The board shall make recommendations to the secretary on the following matters:

(a) standards and requirements for the establishment and approval or acceptance of community health worker education and training programs in the state;

(b) standards and requirements for approval or acceptance of continuing education courses and programs as the board may require for recertification every two years;

(c) minimum education, training, experience, and other qualifications that a certified community health worker shall possess to qualify as a trainer in any education, training, or continuing education program for community health workers;

(d) the process to acknowledge, document, and assess relevant education, training and experience or other qualifications acquired by CHWs practicing in the state before the effective date of the Community Health Workers Act for purposes of certification while waiving minimum training and experience requirements established by the act (also known as “grandfathering”);

(e) the means to assess community health worker competency in connection with certification;

(f) the core competencies to be required for certification, in consideration of current New Mexico and national CHW workforce studies; and

(g) the scope of practice for CCHWs.

(2) The board may provide guidance to the program on issues or topics presented to the board at the program’s discretion.

(3) Board recommendations: The board shall provide to the secretary written recommendations in accordance with the duties listed in this section, including any supporting documentation or public commentary. The secretary shall make a final determination on all board recommendations.

[7.29.5.8 NMAC - N, 1/30/15]

**7.29.5.9 NEW MEXICO REGISTRY OF COMMUNITY HEALTH WORKERS:** The New Mexico registry of community health workers shall be maintained at the department. The registry is voluntary and open to all persons who are CCHWs in the state of New Mexico. The registry shall contain the name, certification number, certification status, and geographic location of the CCHW. Registry information is subject to public inspection.  
[7.29.5.9 NMAC - N, 1/30/15]

**7.29.5.10 COMMUNITY HEALTH WORKER CERTIFICATION:**

**A. Initial certification:**

- (1) All applicants for initial certification in New Mexico shall:
  - (a) submit to the department a completed application in a form specified by the department to include verification that applicant has met the eligibility requirements;
  - (b) submit to the department the designated application fee; and
  - (c) if an applicant otherwise meets the eligibility requirements, then in accordance with this rule, submit a request to the department of public safety (DPS) or a DPS vendor for a state and national criminal history screening. The results of the criminal history screening shall be received by the department before a certificate can be issued.
- (2) Eligibility requirements for applicants who were practicing CHWs before the effective date of the Community Health Workers Act:
  - (a) proof that applicant is at least 18 years of age; and
  - (b) verification of proficiency in the core competencies through training or experience, signed by a current or former supervisor; and
  - (c) two letters of reference; and
  - (d) documentation of 2,000 hours of work or volunteer experience as a CHW in the two years prior to application, or documentation of at least half-time paid or volunteer employment as a CHW in the five years prior to application.
- (3) Eligibility requirements for applicants who were not practicing CHWs before the effective date of the Community Health Workers Act, or who otherwise do not meet the criteria for grandfathering by waiver of minimum training and experience requirements based on practice before the effective date of the Community Health Workers Act:
  - (a) proof that applicant is at least 18 years of age; and
  - (b) proof of completion of a department-approved training program that contains an examination component for each of the core competencies; and
  - (c) at least a high school diploma or certificate of high school equivalency.
- (4) Applicants may be certified at the following levels:
  - (a) generalist: an applicant who provides proof of completion of a department-approved training program that contains an examination component for each of the core competencies, or an applicant who meets the requirements for certification through grandfathering;
  - (b) specialist I: an applicant who meets the requirements for a generalist and who demonstrates additional education or training in at least one specialty area;
  - (c) specialist II: an applicant who meets the requirements for a generalist and who demonstrates additional education or training in at least two specialty areas;
  - (d) specialist III: an applicant who meets the requirements for a generalist and who demonstrates additional education or training in three or more specialty areas;
  - (e) specialty areas include but are not limited to basic clinical support skills, heart health, chronic disease, behavioral health, maternal and child health or developmental disabilities.
- (5) The department shall issue certificates to applicants who satisfy the requirements of this rule, unless the application is disapproved.
- (6) Certificates shall be valid for two years from the date of issuance. A CCHW shall carry the CCHW certificate and present it upon request.

**B. Recertification:** An applicant for recertification shall:

- (1) Submit to the department a completed application in a form specified by the department to include proof of current certification.
- (2) Submit to the department the designated application fee.

(3) Provide proof of completion of at least 30 hours of department-approved continuing education.

(4) Every other recertification period (every four years), if an applicant otherwise meets the eligibility requirements, then in accordance with this rule, submit a request to DPS or a DPS vendor for a current state and national criminal history screening.

**C. Reinstatement after lapse, suspension, or revocation:**

(1) The requirements for reinstatement of a certificate that has lapsed for one year or less are the same as those for recertification, with the payment of fees as identified for reinstatement after lapse in Subsection F of 7.29.5.10 NMAC and, if required as part of recertification, then in accordance with this rule, submission of a request to DPS or a DPS vendor for a current state and national criminal history screening.

(2) The requirements for reinstatement of a certificate that has lapsed more than one year prior to the application date are the same as those for an initial application.

(3) The requirements for reinstatement of a certificate that has been suspended or revoked are the same as those for recertification, provided that the term of suspension has been completed or terminated or approval of reinstatement after revocation has been granted. Applicant shall pay the designated fees for reinstatement after suspension or revocation in Subsection F of 7.29.5.10 NMAC and, in accordance with this rule, submit a request to DPS or a DPS vendor for a current state and national criminal history screening.

**D. Disapproval:**

(1) The department may disapprove an application if an applicant has not met the eligibility requirements as defined by the department or has submitted an incomplete application. The department shall send a notice of disapproval with the reasons why the applicant was disapproved and the requirements necessary to reapply.

(2) An applicant whose application has been disapproved under Paragraph (1) of Subsection D of 7.29.5.10 NMAC may not appeal the disapproval. The applicant shall be permitted to reapply and shall submit a current and complete application that meets the designated requirements within 60 days of receipt of the notice of disapproval. If the re-submitted application is received by the program within the 60 days, no new application fee is required. If the re-submitted application is received after the 60 days, applicant shall be required to pay the application fee designated in this rule.

**E. Application processing:**

(1) Applications, including associated fees, shall be sent to the department's office of community health workers.

(2) The department shall review applications on a rolling basis. Applicants shall be notified in writing within 30 working days of receipt of the application by the department whether their application has been approved or disapproved.

(3) If an application has been disapproved, applicants shall be notified of their ability to reapply pursuant to Paragraph (2) of Subsection D of 7.29.5.10 NMAC.

(4) If an application has been approved, then applicants shall be directed to complete a state and national criminal history screening. For applicants with no criminal history, or with no history of felony convictions, the department shall issue a certificate within 10 working days of receipt of the criminal history screening results.

(5) Applications with an associated criminal history shall be referred to the certification review committee and reviewed according to the procedure set forth in this rule.

**F. Fees:**

(1) The department shall charge the following fees for certification or approval services.

(a)	initial certification: generalist	\$45
(b)	initial certification: specialist I	\$55
(c)	initial certification: specialist II	\$65
(d)	initial certification: specialist III	\$75
(e)	recertification for any level	\$45
(f)	reinstatement after lapse	\$75
(g)	reinstatement after suspension or revocation	\$100
(h)	education, training, or continuing education program approval	\$300
(i)	program approval renewal	\$200

(2) If an applicant is certified as a generalist, prior to his or her recertification the applicant may apply to be a specialist at any level and pay the difference between the specialist fee and the generalist fee.

(3) Payment of fees: Payment of fees will be accepted in a form specified by the department. Fees are not refundable.

(4) Use of fees: The department shall apply any fee it collects under these rules to cover the costs of administering the community health worker certification program established pursuant to the Community Health Workers Act.

**G. Unauthorized practice:**

(1) In order to use the title “certified community health worker,” the initials “CCHW” or other designation indicating that the individual is a certified community health worker, an individual shall be certified pursuant to the provisions of the Community Health Workers Act and these rules.

(2) To ensure compliance, the department may issue cease-and-desist orders to persons violating the provisions of the Community Health Workers Act or these rules.

(3) A CCHW shall engage only in those activities authorized pursuant to the Community Health Workers Act and these rules. While engaging in practice as a CCHW, an individual shall not engage in or perform any act or service for which another professional certificate, license or other legal authority is required unless he or she holds the relevant professional certificate, license or other legal authority to perform that act or service.

[7.29.5.10 NMAC - N, 1/30/15]

**7.29.5.11 CRIMINAL HISTORY SCREENING:**

**A.** The department is authorized to obtain the criminal history records of applicants and to exchange fingerprint data directly with the federal bureau of investigation (FBI), DPS and any other law enforcement agency or organization. The department shall require fingerprinting of applicants for the purposes of this section.

**B. Procedure:**

(1) If an applicant otherwise meets the eligibility requirements, then the department shall require the applicant to submit a request to DPS or a DPS vendor for a current state and national criminal history screening.

(2) The department shall provide applicants with the department’s originating agency identification (ORI) number or other department identifier for the purposes of criminal history screening.

(3) Applicant shall provide to DPS or a DPS vendor a background check request, fingerprints, and supporting documentation including an authorization for release of information to the department in accordance with DPS or the designated vendor’s procedures.

(4) DPS or the designated DPS vendor shall review state records and also transmit the fingerprints to the FBI for a national screening. The results of the screening shall be made available to the department for review.

(5) The department shall make a determination whether the applicant has been convicted of a felony that bears upon the applicant’s fitness to provide services.

(6) Applicant shall bear any costs associated with ordering or conducting criminal history screening. Fees are determined by and payable to DPS or the designated DPS vendor. Fees cannot be waived by the department.

(7) The department shall comply with applicable confidentiality requirements of DPS and the FBI regarding the maintenance, dissemination, and destruction of criminal background check information.

(8) For applicants with no criminal history, or with no history of felony convictions, the department shall issue a certificate in accordance with this rule if all other requirements for certification have been satisfied.

[7.29.5.11 NMAC - N, 1/30/15]

**7.29.5.12 CERTIFICATION REVIEW COMMITTEE:**

**A.** A certification review committee is hereby established. The committee shall be appointed by the secretary and shall be comprised of five employees of the public health division, to include the division director, the deputy director of programs, and the CHW program manager. The committee shall conduct an individualized review of the grounds for action against a certificate and shall determine whether to pursue action against a certificate by a majority vote. A certificate may be denied, suspended or revoked, or may be subject to any lesser action, including but not limited to reprimand or probation.

**B. Grounds for action against a certificate:**

(1) Conviction of a felony that bears upon the applicant’s fitness to provide services.

(2) Fraud, deceit, or misrepresentation during the certification application process.

(3) Failure to possess and apply the knowledge, skill or care that is ordinarily possessed and exercised by CCHWs or as defined by the core competencies.

(4) Unprofessional conduct, which includes but is not limited to:

- (a) verbally or physically abusing a client;
- (b) unauthorized practice or practice which is beyond the defined scope of practice for CCHWs, including unauthorized use of the CCHW designation;
- (c) unauthorized disclosure of medical or other confidential information;
- (d) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation or deceit; or
- (e) physical or mental incapacity which could result or has resulted in performance of CCHW duties in a manner which endangers the health and safety of others.

**C. Committee review of criminal history screening results:**

(1) The committee shall conduct an individualized review of applications with an associated history of felony convictions, and shall determine whether to pursue action against a certificate by a majority vote. Committee members shall meet any DPS or FBI requirements regarding individuals who handle criminal history information.

(2) The committee may request that applicants provide additional information in writing in order to make a final determination of certification, such as evidence of acquittal, dismissal, conviction of a lesser included crime or rehabilitation.

(3) The provisions of the Criminal Offender Employment Act, Section 28-2-1 through 28-2-6 NMSA 1978 shall govern any consideration of criminal records required or permitted by the Community Health Workers Act. The following factors may also be considered in order to make a final determination on certification:

- (a) total number of felony convictions and type of crimes;
- (b) time elapsed since last conviction or since discharge of sentence;
- (c) circumstances of the crime including but not limited to whether violence was involved;
- (d) activities evidencing rehabilitation, including but not limited to substance abuse or other rehabilitation programs;
- (e) false or misleading statements in the application; and
- (f) relation of crimes to the scope of practice.

(4) For the purposes of this section and pursuant to the Criminal Offender Employment Act, Section 28-2-4 NMSA 1978:

(a) if an applicant has been convicted of a felony, and the conviction does not directly relate to the scope of practice, there is a presumption of sufficient rehabilitation if the applicant has completed probation or parole supervision or a period of three years has lapsed after final discharge or release from any term of imprisonment without subsequent conviction; and

(b) if an applicant has been convicted of a felony, and the conviction directly relates to the scope of practice, then the burden is on the applicant to prove by a preponderance of the evidence that he or she has been sufficiently rehabilitated.

(5) Applicants shall be notified in writing of the decision to pursue action against a certificate based on the results of a criminal history review, including a statement of the grounds or subject upon which the action is based.

(6) An applicant whose certification or recertification is denied, suspended or revoked based on information obtained in a criminal history background check, shall be entitled to review the information obtained and to appeal the decision pursuant to the procedure in accordance with this rule.

**D. Committee review of other grounds for action:**

(1) The committee shall conduct an individualized review of the grounds for action against a CCHW or applicant and shall determine whether to pursue action against a certificate by a majority vote.

(2) The committee may request that applicants provide additional information in writing in order to make a final determination of certification.

(3) Applicants shall be notified in writing of the decision to pursue action against a certificate based on the results of the committee's review, including a statement of the grounds or subject upon which the proposed action is based.

(4) An applicant whose certification or recertification is denied, suspended or revoked shall be entitled to review the information obtained and to appeal the decision pursuant to the procedure in accordance with this rule.

**E.** An applicant who is reprimanded, placed on probation, or who is otherwise subjected to any lesser form of action against a certificate than denial, suspension, or revocation may upon good cause submit a verbal or

written request to the certification review committee for a secondary review. Requests for review must be submitted within 10 working days of the original decision to take action against a certificate. All decisions by the committee after a secondary review are considered final and are not subject to appeal.

[7.29.5.12 NMAC - N, 1/30/15]

**7.29.5.13 HEARINGS:**

**A. Right to appeal:** An applicant may appeal a decision by the department to deny, suspend or revoke a certificate by requesting a hearing by mailing a certified return receipt letter to the address provided in the notice of action within 20 days after service of notice.

**B. Notice:** The department shall serve upon an applicant written notice containing the action against a certificate and a statement of the grounds or subject upon which the action is based and instructions for requesting a hearing.

**C. Notice of hearing:** Upon receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico within 60 working days of receipt of the request.

(1) Either party may request a continuance at least 10 days prior to the scheduled hearing, to be approved or denied by the hearing officer.

(2) If an applicant fails to appear after requesting a hearing, the hearing officer may proceed to consider the matter and render a report and recommendation.

(3) If no request for a hearing is made in the time and manner specified, the committee shall take the action against the certificate and such action shall be final.

**D. Hearing officer duties:** The hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and rule on any motions or other matters that arise prior to the hearing.

**E. Admissible evidence:** The hearing officer may admit evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs. Rules of evidence shall not apply but may be considered in determining the weight to be given to any item of evidence. Action against a certificate must not be based solely on hearsay evidence.

**F. Discovery:** Any party is entitled to obtain the names and addresses of witnesses who will or may be called by the other party to testify and to inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing. Additional discovery may be ordered at the hearing officer's discretion.

**G. Burden of proof:** In accordance with the Criminal Offender Employment Act:

(1) When the action against a certificate is not based on a review of the applicant's criminal history report, the department has the burden of proving by a preponderance of the evidence the basis for the action.

(2) When the action against a certificate is based on a review of the applicant's criminal history report, and the applicant has been convicted of a felony directly related to the scope of practice, the applicant has the burden of proving sufficient rehabilitation by a preponderance of the evidence.

(3) When the action against a certificate is based on a review of the applicant's criminal history report, and the applicant has been convicted of a felony not directly related to the scope of practice, there is a presumption of rehabilitation and the department has the burden of proving by a preponderance of the evidence that the applicant has not been sufficiently rehabilitated.

**H. Conduct of hearing:** Hearings shall be open to the public but may be closed at either party's request, at the discretion of the hearing officer. The hearing officer shall state on the record the reasons for holding a closed hearing.

**I. Legal representation:** An individual entitled to a hearing under this rule shall have the right to be represented by an attorney licensed to practice in New Mexico or by a member of his or her profession or occupation, or both.

**J. Hearing officer written report and recommendation(s):** The hearing officer shall issue a report and recommended finding to the department secretary within 30 working days of the final submission in the case.

**K. Decision of the department:** The secretary shall render a final determination in writing, including the basis for the decision, within 30 calendar days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the applicant by certified mail, return receipt requested to the most current address provided by the applicant. It is the responsibility of the applicant to provide current contact information to the program.

**L. Reinstatement of a suspended or revoked certificate:**

(1) Requests for reinstatement for a revoked certificate shall not be considered by the department prior to the expiration of three years from the date of the revocation indicated in the department's final

decision. Requests for reinstatement of a suspended certificate shall not be considered by the department prior to the expiration of one year from the date of the suspension indicated in the department's final decision.

(2) Individuals who request reinstatement of their certificate shall provide the department with substantial evidence to support their request in the form of notarized written reports or sworn statements from individuals who have personal knowledge of the individual's activities and progress during the time that the certificate is suspended or revoked.

(3) Reinstatement of a suspended or revoked certificate requires proof of meeting the recertification requirements as set forth in this rule including payment of the reinstatement fee designated in this rule.

(4) If reinstatement of a suspended or revoked certificate is denied, individuals have a right to appeal in accordance with the hearing procedures set forth in this rule.

[7.29.5.13 NMAC - N, 1/30/15]

**7.29.5.14 INSPECTION OF RECORDS:** The following records are not subject to public inspection, and shall be maintained in a confidential manner:

A. Health information protected by state and federal laws.  
B. Materials associated with reviews conducted by the certification review committee, including but not limited to criminal history information.

C. Complaints or allegations regarding a CCHW that are not substantiated following investigation.

D. Personal identifiers in applications, such as date of birth, social security numbers, home address and phone numbers.

[7.29.5.14 NMAC - N, 1/30/15]

**HISTORY OF 7.29.5 NMAC: [RESERVED]**