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7/21/04

NEBRASKA HEALTH AND HUMAN SERVICES  
REGULATION AND LICENSURE

172 NAC 104

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 104 PRACTICE OF CERTIFIED NURSE MIDWIVES

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TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 104 PRACTICE OF CERTIFIED NURSE MIDWIVES

104-001 SCOPE AND AUTHORITY: These regulations govern the practice of certified nurse midwives in the State of Nebraska. These regulations are authorized by and implement Neb. Rev. Stat. §§ 71-147 to 71-148, 71-150 to 71-162.05, 71-164.01, 71-172.02, and 71-1,132.20; and 71-1738 to 71-1765, also known as the Nebraska Certified Nurse Midwifery Practice Act.

104-002 DEFINITIONS

Act means the Nebraska Certified Nurse Midwifery Practice Act.

Approved nurse midwifery education program means a program approved by the American College of Nurse-Midwives, Division of Accreditation.

Approved examination means the National Midwifery Certification Examination given by the American College of Nurse-Midwives Certification Council, Inc.

Attest/Attestation means that the individual declares that all statements on the application/petition are true and complete.

Boards means the Board of Nursing and Board of Examiners in Medicine and Surgery.

Completed application means all of the information requested in 172 NAC 104-003.02 Item 1 has been provided and attested and the appropriate fees and all required documentation have been submitted.

Continuing education means planned, organized, systematic, and evaluative educational experiences designed to maintain or enhance the knowledge, skills, and/or attitudes of certified nurse midwives for nursing practice in the expanded role of nurse midwifery.

Council means the American College of Nurse-Midwives Certification Council.

CNM means a Certified Nurse Midwife who is a registered nurse and who meets all the criteria for certification and holds a current certification from the State of Nebraska to practice certified nurse midwifery.

Department means the Department of Health and Human Services Regulation and Licensure.

Director means the Director of Regulation and Licensure or the Chief Medical Officer if one has been appointed pursuant to Neb. Rev. Stat. § 81-3201, for performance of the duties set out in that statute.

Lapsed status means the designation given to a certificate holder who requests this status or who fails to renew his/her certificate.

Licensed Practitioner means any physician licensed to practice pursuant to Neb. Rev. Stat. § 71-1,104 and whose practice includes obstetrics.

NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 104.

Nurse Licensure Compact means the agreement among states that have enacted the standard provisions of the compact into their individual state statutes. In Nebraska, the compact is in Neb. Rev. Stat. § 71-1795. The compact allows a nurse to have one license (in his/her state of residence) and practice in other states, as long as the nurse acknowledges that s/he is subject to each state's practice laws and discipline. Practice across state lines is allowed, whether physical or electronic, unless the nurse is under discipline or a monitoring agreement that restricts practice across state lines.

Official record means a document that carries the seal, signature or other notation indicating that the document was issued by the primary source.

Official transcript means a transcript issued by and under the original seal of the educational institution.

Protocol is an instrument that guides the nurse midwife in the collection of data and implementation of a treatment within identified parameters.

Reentry program means an organized approach to learning that results in current knowledge for nursing practice in the expanded role of nurse midwifery.

Reinstatement means the return to active status and the restoration of the authority to practice to a certificate holder who was previously licensed in this state.

104-003 REQUIREMENTS FOR ISSUANCE OF A CERTIFICATE: A person may practice as a CNM in Nebraska only if s/he holds a Nebraska certificate or a temporary permit. This requirement does not prohibit persons identified in Neb. Rev. Stat. § 71-1765 from performance of the functions as limited by that section. The criteria for issuance of a certificate and temporary permit, and the documents required in applying are set forth below.

104-003.01 Requirements for Certification: The applicant must:

1. Be licensed as a registered nurse in the State of Nebraska or have the authority to practice pursuant to the Nurse Licensure Compact;
2. Have successfully completed an approved nurse midwifery education program;

3. Have passed an approved examination;
4. Meet the requirements for continuing competency as set forth in 72 NAC 104-004; and
5. Pay the appropriate fee.

104-003.02 Applicants for certification must submit to the Department:

1. A completed written application which:
  - a. Is verified by the applicant's oath; and
  - b. Contains the following information about the applicant:
    - (1) Name;
    - (2) Address;
    - (3) Gender;
    - (4) Date of birth;
    - (5) Place of birth;
    - (6) Social Security number;
    - (7) Home and business telephone numbers;
    - (8) Primary state of residence;
    - (9) RN license number in Nebraska or in primary state of residence if primary state of residence is another compact state;
    - (10) Name and location of the approved course of study in midwifery from which the applicant graduated;
    - (11) Date of program completion;
    - (12) Date of successful examination by the American College of Nurse-Midwives or the date scheduled to take the examination;
    - (13) A statement that the applicant has practiced or graduated within the previous five years;
    - (14) Identification of employment as a nurse midwife in the past five years, if applicable;
    - (15) A statement describing all:
      - (a) Pending charges which could result in a felony or misdemeanor conviction;
      - (b) Felony or misdemeanor convictions;
      - (c) Denials, discipline, or pending discipline of a license in any health care profession; and
      - (d) Denials of admission to take a licensing examination in any health care profession;
2. An official transcript showing completion of the requirements for an approved nurse midwifery education program.
  - a. Any applicant who indicates on her/his application that s/he has not completed an approved nurse midwifery education program or practiced in the advanced role of nurse midwifery within the five years immediately preceding application, will be required to meet the continuing competency requirements specified in 172 NAC 104-004;
3. Documentation of having passed an approved examination by letter or other official record from the Council;

4. Attestation by the applicant:
  - a. That s/he has not practiced in Nebraska prior to the application for a license; or
  - b. To the actual number of days practiced in Nebraska prior to the application for a license.
    - (1) Administrative Penalty/Other Action: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty pursuant to 172 NAC 104-010, or such other action as provided in the statutes and regulations governing the credential; and
5. The required certification fee.
  - a. When a certificate will expire within 180 days after its initial issuance date, the Department will collect \$25 and if applicable the Licensee Assistance Program fee of \$1, and the certificate will be valid until the next subsequent renewal date.

104-003.03 Any applicant who indicates on his/her application that s/he has:

1. Been convicted or has pending charges of a misdemeanor or felony other than a minor traffic violation;
2. Has had his/her credential to practice in a health care profession denied or disciplined or has any pending disciplinary action or denial; or
3. Been denied admission to take the licensing examination in any health care profession, will be required to submit:
  - a. A full explanation of the conviction, denial, and/or disciplinary action and/or pending charges, denial, and/or disciplinary action;
  - b. Official records as requested by the Department related to the conviction, denial, or discipline, for example: probation reports, court records, disciplinary reports, or chemical dependency evaluation.

104-003.04 The Department or the Boards may require these applicants to undergo an interview by Department staff or the Boards at their discretion in order to clarify or amplify information contained in the official record.

104-003.05 Temporary Permit: Applicants for certification as a CNM may be granted a temporary permit. The conditions under which a temporary permit may be issued and the documents required are set forth below.

104-003.05A Applicants who have not previously taken an approved examination and who meet all of the criteria for certification as a CNM except having passed an approved examination may be granted a temporary permit pending the results of the first examination following graduation.

1. For applicants who have not previously taken an approved examination, the examination required for certification in the State of Nebraska will be considered to be the first examination following graduation.

2. Only applicants who have submitted a completed application, the required fee for certification, and documentation of continuing competency and who have completed an approved nurse midwifery education program and have registered for the examination will be issued a temporary permit.
  - a. Documentation of completion of an approved nurse midwifery program may be by official transcript or by letter from the Dean/Chairperson of the education program.
  - b. Proof of registration for the examination must be by letter to the Department from the Council or a notarized copy of a document from the Council to the applicant stating that registration is completed and identifying the date of the examination.
3. The temporary permit is issued for 60 days or until the results of the examination are known.
  - a. The temporary permit is null and void if the applicant fails the examination.
  - b. The temporary permit is null and void if the applicant fails to take the scheduled examination, unless extended at the discretion of the Boards. Circumstances which may result in extension of the permit include illness/injury of self or immediate family member, or death of an immediate family member immediately prior to or on the date(s) of the examination.
    - (1) A written request for extension of the permit must be made to the Boards explaining the circumstances under which the extension is requested.

104-003.05B Applicants who meet all of the criteria for certification as a CNM and who are lawfully authorized to practice as a CNM in another state may be issued a temporary permit pending completion of the application for a Nebraska certificate.

1. Only applicants who have submitted a completed application and the required certification fee, and evidence of current authorization by another state will be issued a temporary permit.
  - a. Evidence of lawful authorization in another state may be documented by submission of a notarized copy of a current certificate/license in another state or other official record.
2. The temporary permit is issued for up to 120 days and is valid until the certificate is issued, until the expiration date, or until any final decision is made to deny the certificate unless the permit is extended at the discretion of the Boards for up to one year.

104-003.05C Applicants who meet all of the criteria for certification as a CNM except the continuing competency requirements and who require a reentry program or supervised practice in accordance with Neb. Rev. Stat. § 71-1755(4) may be issued a temporary permit.

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1. Only applicants who have submitted a completed application and the required certification fee, and who have completed an approved nurse midwifery education program will be issued a temporary permit.
2. A temporary permit issued pursuant to this section is valid for clinical practice undertaken as part of a reentry program and only for the duration of the program, or for clinical practice under the supervision of a physician or CNM and for a specified time determined by the Boards.

104-003.06 The Department will act within 150 days upon all completed applications for certification.

104-003.07 If the Department denies issuance of a certificate, the applicant will be given an opportunity for an administrative hearing before the Department conducted in accordance with the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920.

104-004 CONTINUING COMPETENCY: The criteria for demonstration of continuing competency and the documentation required are set forth below:

104-004.01 By an applicant seeking certification:

1. Completion of an approved nurse midwifery education program; or
2. Practice as a nurse midwife within the five years immediately preceding application.

104-004.02 By a certificate holder seeking to renew or reinstate a CNM certificate:

104-004.02A Submission of a letter of reference from a licensed practitioner or CNM stating:

1. That the applicant is currently competent to practice as a CNM; and
2. That the referencing licensed practitioner or CNM bases such statement on observance by that licensed practitioner or CNM of the applicant's practice of at least 850 hours of practice as a CNM within the previous two years; or

104-004.02B Submission of a letter of reference from a licensed practitioner or CNM stating:

1. That the applicant is currently competent to practice as a CNM; and
2. That the referencing licensed practitioner or CNM bases such statement on observance by that licensed practitioner or CNM of the applicant's practice of at least 2080 hours of practice as a CNM within the previous five years.

104-004.02C Applicants who are graduates within the previous two years are not required to provide further evidence of competence.

104-004.03D Applicants seeking certification, renewal or reinstatement that cannot meet the requirements of 172 NAC 104-004.01 or 004.02 must meet the continuing competency requirement by:

1. Documentation of successful completion of a reentry program within the previous two years that has been approved by the Boards; or
2. Documentation of having passed an approved examination within the two years immediately preceding application and successful completion of supervised practice as specified by the Boards.

104-004.03E Applicants must obtain a temporary permit for any required supervised practice.

104-005 PRACTICE AGREEMENT: Prior to commencing practice as a nurse midwife, a CNM must have and maintain a written Practice Agreement with a collaborating licensed practitioner. The written agreement must be on file with the Department as a condition of lawful practice.

104-005.01 The practice agreement must include:

1. The name, address, home and business telephone number of the CNM;
2. The name, address, license number, and practice specialty of the collaborating physician(s);
3. The name and address of each office, hospital and any other site at which the CNM will practice;
4. The statement that the collaborating physician(s) is/are responsible for supervision through ready availability for consultation and direction to the CNM when any delegated medical functions are provided by the CNM;
5. The statement that the CNM and collaborating physician(s) have jointly approved protocols for all delegated medical functions which guide the CNM's practice. The protocols must be reviewed, updated, and reaffirmed by both parties on a regular basis and no less frequently than every two years. Protocols must be available at all work sites;
6. The statement that the specific medical functions delegated to the nurse midwife are based upon the educational preparation and continued experience of the nurse midwife. Validation and documentation of education/training and assessment of competency are the responsibility of the nurse midwife and the physician(s). Specific medical functions may include:
  - a. Attending cases of normal childbirth;
  - b. Providing prenatal, intrapartum, and postpartum care;
  - c. Providing normal obstetrical and gynecological services for women;
  - d. Providing care for the newborn immediately following birth; and

- e. Prescribing legend drugs, Schedule II controlled substances for up to 72 hours and for pain control, and Schedule III, IV and V controlled substances; and
- 7. The notarized signatures of the nurse midwife and physician(s) swearing that the statements contained in the practice agreement are true to the best of that person's knowledge and belief and that person has read and understands the practice agreement and affidavit.

104-005.02 Any CNM desiring to alter an approved practice agreement by change in setting, collaborating physician, modification of authorized medical function, or for any other reason must request an approval from the Boards for a new or amended agreement before any change is implemented.

#### 104-006 RENEWAL OF A CERTIFICATE

104-006.01 Expiration: All CNM certificates issued by the Department pursuant to the Act and these regulations expire on October 31 of each even-numbered year unless renewed as provided below.

104-006.02 Renewal Process: Any certificate holder who wishes to renew her/his certificate must:

- 1. Meet the continuing competency requirements as pursuant to 172 NAC 104-004.02;
- 2. Pay the renewal fee as prescribed in 172 NAC 104-009;
- 3. Respond to the following questions:
  - a. Has your license/certification in any profession in another state been revoked, suspended, limited, or disciplined in any manner?
  - b. Have you been convicted of a misdemeanor or felony?These questions relate to the time period since the last renewal of the certificate or during the time period since initial certification in Nebraska if such occurred within the two years prior to the certificate expiration date; and
- 4. Cause to be submitted to the Department:
  - a. The renewal notice;
  - b. The renewal fee;
  - c. Attestation of completing the continuing competency requirements within 24 months of the date of expiration. Attestation of meeting continuing competency requirements satisfies the documentation requirement of Neb. Rev. Stat. § 71-1757.
  - d. If any disciplinary action was taken against the applicant's certification by another state, an official copy of the disciplinary action, including charges and disposition; and
  - e. If the applicant has been convicted of a felony or misdemeanor:

- (1) Official Court Record, which includes charges and disposition;
- (2) Copies of arrest records;
- (3) A letter from the applicant explaining the nature of the conviction;
- (4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol-related offense and if treatment was obtained and/or required; and
- (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.

104-006.03 First Notice: On or before August 1 of even-numbered years the Department will send a renewal notice by means of regular mail to each certificate holder at the certificate holder's last place of residence as noted in the records of the Department. It is the responsibility of the certificate holder prior to the renewal period to notify the Department of any name and/or address changes.

104-006.03A The renewal notice will specify:

1. The name of the certificate holder;
2. The certificate holder's last known address of record;
3. The certification number;
4. The expiration date of the certificate;
5. The renewal fee as prescribed in 172 NAC 104-009;
6. The attestation of continuing competency;
7. The option to place the certificate on lapsed status; and
8. The attestation of primary state of residence.

104-006.03B The certificate holder must apply for renewal by submitting to the Department:

1. The renewal notice;
2. The renewal fee;
3. The certificate holder's Social Security number;
4. Attestation of meeting the continuing competency requirements within the required time period; and
5. Documentation relating to misdemeanor or felony conviction(s) or certificate/licensure revocation, suspension, limitation, or disciplinary action (if applicable).

104-006.03C If the certificate holder wishes to place her/his certificate on lapsed status s/he must request that her/his certificate be placed on lapsed status by submitting to the Department the renewal notice with a check in the box marked lapsed.

104-006.03D The Department will notify the certificate holder in writing of the acceptance or denial of the request to allow the certificate to be placed on lapsed status.

104-006-03E A certificate holder whose certificate is on lapsed status must not practice in this state.

104-006.04 Second Notice: The Department will send to each certificate holder who fails to renew her/his certificate or place the license on lapsed status in response to the first notice, a second notice of renewal in accordance with the requirements of 172 NAC 104-006.03 that specifies:

1. That the certificate holder failed to pay the renewal fee;
2. That the certificate has expired;
3. That the Department will suspend action for 30 days following the date of expiration;
4. That the certificate holder is subject to an administrative penalty pursuant to 172 NAC 104-010 if s/he practices after the expiration date;
5. That upon receipt of the renewal fee, together with an additional late fee of \$25, and documentation of continuing competency within that time, the certificate will be not be placed on lapsed status; and
6. That upon failure to receive \$25 in addition to the renewal fee, and documentation of continuing competency, the certificate will be lapsed.

104-006.04A The certificate holder must apply for renewal by submitting to the Department:

1. The renewal notice;
2. The renewal fee and the additional late fee of \$25;
3. The certificate holder's Social Security number;
4. Attestation by the certificate holder:
  - a. That s/he has not practiced in Nebraska since the expiration of her/his certificate; or
  - b. To the actual number of days practiced in Nebraska since the expiration of her/his certificate;
5. Attestation of meeting the continuing competency requirements within the required time period; and
6. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation, or disciplinary action (if applicable).

104-006.04A1 If the certificate holder wishes to place her/his license on lapsed status, s/he must request that her/his certificate be placed on lapsed status by submitting to the Department the renewal notice with a check in the box marked lapsed.

104-006.04A2 The Department will notify the certificate holder in writing of the acceptance or denial of the request to allow the license to be placed on lapsed status.

104-006.04B When a certificate holder fails, within 30 days of expiration of a certificate, to pay the renewal fee, to submit proof of continuing competency, and/or

to pay an additional late fee of \$25, the Department will automatically lapse the certificate without further notice or hearing and make proper record of the lapsed status.

104-006.04C When the certificate holder has given notification to the Department that s/he desires to have the certificate lapse upon expiration, 172 NAC 104-006.04B will not apply.

104-006.04D The Department may refuse to renew a license for falsification of any information submitted for renewal of a certificate. The refusal will be made pursuant to Neb. Rev. Stat. §§ 71-150 to 71-155 and the Department's Rules of Practice and Procedure.

104-006.04E An individual who practices after expiration of her/his certificate is subject to assessment of an administrative penalty pursuant to 172 NAC 104-010, or such other action as provided in the statutes and regulations governing the certificate.

104-007 RE-CREDENTIALING: This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to practice in total or in part and who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

104-007.01 Eligibility

104-007.01A An individual whose credential has been previously:

1. Placed on lapsed status;
2. Suspended or limited for disciplinary reasons; or
3. Voluntarily surrendered or voluntarily limited for an indefinite period of time;

may request, at any time, to be re-credentialed and re-authorized to practice under the credential, in accord with these regulations.

104-007.01B An individual whose credential has been revoked for disciplinary reasons may apply for reinstatement only after a period of two years has elapsed from the date of revocation.

104-007.01C An individual who practices prior to re-credentialing is subject to:

1. Assessment of an administrative penalty pursuant to 172 NAC 104-010, and
2. Limitation or other sanction on the credential, or denial of the request to be re-credentialed and re-authorized to practice under the credential, and referral for prosecution for uncredentialed practice, as provided in the statutes and regulations governing the credential.

104-007.02 Requirements to Move a Credential from Lapsed to Active Status: A person whose credential has been placed on lapsed status may have her/his credential moved from lapsed to active status upon proof to the Department that s/he meets the following requirements:

1. Meet renewal requirements, including:
  - a. The continuing competency requirements; and
  - b. Paying the renewal fee and late fee; and
2. Attest:
  - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
  - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

104-007.03 Procedures for Moving from Lapsed to Active Status: To move a credential from lapsed status to active status, the applicant must submit the following to the Department:

1. A written application which contains the following information about the applicant:
  - a. Name;
  - b. Address;
  - c. Social Security number; and
  - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
  - e. A statement describing all:
    - (1) Felony or misdemeanor convictions during the time period since the credential was active;
      - (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
        - [1] Official Court Record, which includes charges and disposition;
        - [2] Arrest records;
        - [3] A letter from the applicant explaining the nature of the conviction;
        - [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol-related offense and if treatment was obtained and/or required; and
        - [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
      - (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;
        - (a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and

- (3) Disciplinary charges pending against any professional credential held by the applicant; and
  - f. Verification that the continuing competency requirements for renewal have been met;
- 2. The renewal fee and late fee; and
  - 3. Attestation by the applicant:
    - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
    - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

104-007.03A If an applicant has practiced while her/his credential was lapsed the Department may:

- 1. Assess an administrative penalty pursuant to 172 NAC 104-010;
- 2. Initiate disciplinary action against the credential;
- 3. Deny the request to move the credential from lapsed to active status; or
- 4. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

104-007.03B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

- 1. Initiate disciplinary action against the credential;
- 2. Deny the request to move the credential from lapsed to active status; or
- 3. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

104-007.03C In either event pursuant to 172 NAC 104-007.03A or 104-007.03B, a notice and the opportunity for hearing will be given to the applicant.

104-007.03D The Department will act within 150 days on all completed applications.

104-007.04 Requirements to Reinstate a Credential Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must meet the following requirements:

- 1. Petition the Boards for reinstatement:
  - a. The petition for reinstatement must be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and

- b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked;
2. Pay the reinstatement fee of \$75; and
3. If the credential was revoked or suspended, attest:
  - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
  - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.

104-007.05 Procedures for Reinstatement Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An application for reinstatement will be consecutively reviewed by both Boards according to the procedures set forth in this section. An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must submit to the Boards:

1. A petition for reinstatement:
  - a. Stating the reason the petitioner believes his/her credential should be reinstated;
  - b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner, each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked;
  - c. Containing the following information about the petitioner:
    - (1) Name;
    - (2) Address;
    - (3) Social Security number; and
    - (4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;
    - (5) A statement describing all:
      - (a) Felony or misdemeanor convictions during the time period since the credential was suspended, limited, or revoked;
        - [1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:
          - [a] Official Court Record, which includes charges and disposition;
          - [b] Arrest records;
          - [c] A letter from the petitioner explaining the nature of the conviction;
          - [d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol-related offense and if treatment was obtained and/or required; and

- [e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.
  - (b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was suspended, limited, or revoked;
    - [1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
  - (c) Disciplinary charges pending against any professional credential held by the petitioner; and
  - (6) Any continuing competency activities;
2. The reinstatement fee of \$75; and
  3. Attestation by the petitioner, if the credential was revoked or suspended:
    - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
    - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.
      - (1) If a petitioner has practiced after her/his credential was revoked the Department may assess an administrative penalty pursuant to 172 NAC 104-010 in which case a separate notice and opportunity for hearing will be sent to the petitioner.
      - (2) If a petitioner has practiced after her/his credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken as provided in 172 NAC 104-007.05G.

104-007.05A The Boards will make a recommendation to the Director regarding reinstatement following disciplinary action. In determining whether reinstatement should be recommended, the Boards may:

1. Request the Department to investigate all activities of the petitioner since the disciplinary action was taken against him/her, including activities prohibited by Neb. Rev. Stat. §§ 71-147 and 71-148;
2. Require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the Boards, the petitioner being free also to consult a physician or physicians of his/her own choice for a complete diagnostic examination and make available a report or reports thereof to the Boards;
3. Require the petitioner to pass a written, oral, or practical examination or any combination of such examinations; or
4. Require the petitioner to complete additional education.

104-007.05B The petition to recommend reinstatement will be considered at the next meeting of the Boards that is held, but not earlier than 30 days after the petition is filed.

104-007.05C Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Boards within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Boards.

104-007.05D If the Boards recommend reinstatement of the credential, no public hearing need be held on the petition.

104-007.05E Prior to any recommendation by the Boards against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Boards, if formally requested by the petitioner.

104-007.05E1 The petitioner's request for a formal hearing must be submitted within 30 days of the Boards' notification of an opportunity for a formal public hearing.

104-007.05E2 If the petitioner had a hearing or an opportunity for a hearing on a prior petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04 within a period of two years immediately preceding the filing of the current petition, the Boards may grant or deny, without a hearing, the current petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04.

104-007.05F If the petitioner formally requests a formal public hearing or if the Boards otherwise hold such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.

104-007.05G The Boards review the petition to recommend reinstatement, any examination or investigatory information, and the record of hearing, if one was held. The Boards will submit their recommendation to the Director within 180 days of receipt of the petition to recommend reinstatement.

104-007.05G1 If the Boards recommend reinstatement of the credential:

1. The Boards will send their recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.
2. The petitioner must submit to the Department an application for reinstatement by the Director within 30 days of receipt of the Boards' recommendation.

- a. The application must include:
  - (1) Name of the petitioner; and
  - (2) Signed statement that the petitioner requests the Director to issue the credential in accordance with the Boards' recommendation for reinstatement.
3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
  - a. The application;
  - b. The written recommendation of the Boards, including any finding of fact or order of the Boards;
  - c. The petition submitted to the Boards;
  - d. The record of hearing, if any; and
  - e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Boards and the petitioner.
4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Boards. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Boards' recommendation. A decision by the Director to reverse or modify the Boards' recommendation will be based on finding that the Boards' recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.
  - a. When the Director affirms, modifies or reverses the Boards' recommendation for reinstatement, the Director will enter an order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner.
  - b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

104-007.05G2 If the Boards recommend reinstatement of the credential with terms, conditions, or restrictions:

1. The Boards will send their recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.
2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Boards' recommendation.
  - a. The application must include:

- (1) Name of the petitioner; and
  - (2) Signed statement that the petitioner requests the Director to issue the credential in accordance with the Boards' recommendation for reinstatement.
3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
  - a. The application;
  - b. The written recommendation of the Boards, including any finding of fact or order of the Boards;
  - c. The petition submitted to the Boards;
  - d. The record of hearing, if any; and
  - e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Boards and the petitioner.
4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Boards. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Boards' recommendation. A decision by the Director to reverse or modify the Boards' recommendation will be based on finding that the Boards' recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.
  - a. When the Director affirms, modifies or reverses the Boards' recommendation for reinstatement, the Director will enter an order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner.
  - b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

104-007.05G3 If the Boards deny reinstatement, the Boards will send to the petitioner a written notice of the Boards' recommendation to deny reinstatement. The petitioner may appeal the Boards' decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

104-007.06 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for an Indefinite Period of Time

104-007.06A Credentials voluntarily surrendered or limited for an indefinite period of time pursuant to Neb. Rev. Stat. §71-161.11 may be restored at the discretion of the Department.

104-007.06A1 An applicant for restoration of a credential that was voluntarily surrendered or limited for an indefinite period of time must submit to the Department:

1. A written application which contains the following information about the applicant:
  - a. Name;
  - b. Address;
  - c. Social Security number; and
  - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
  - e. A statement describing all:
    - (1) Felony or misdemeanor convictions during the time period since the credential was active;
      - (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
        - [1] Official Court Record, which includes charges and disposition;
        - [2] Arrest records;
        - [3] A letter from the applicant explaining the nature of the conviction;
        - [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol-related offense and if treatment was obtained and/or required; and
        - [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
    - (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;
      - (a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
    - (3) Disciplinary charges pending against any professional credential held by the applicant;
  - f. Any continuing competency activities; and
  - g. Attestation:
    - (1) That s/he has not practiced in Nebraska prior to the voluntary surrender of her/his credential; or
    - (2) To the actual number of days practiced if the applicant has practiced in Nebraska prior to the voluntary surrender of her/his credential.

104-007.06A2 If an applicant has practiced while her/his credential was voluntarily surrendered, the Department may:

1. Assess an administrative penalty pursuant to 172 NAC 104-010;
2. Initiate disciplinary action against the credential;
3. Deny the request to restore the credential; or
4. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

104-007.06A3 If an applicant has committed any other violation of the statutes and regulations governing the credential while her/his credential was voluntarily surrendered or limited, the Department may:

1. Initiate disciplinary action against the credential;
2. Deny the request for restoration of the credential; or
3. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

104-007.06A4 In either event pursuant to 172 NAC 104-007.06A2 or 104-007.06A3 a notice and the opportunity for hearing will be given to the applicant.

104-007.06A5 The Department will act within 150 days on all completed applications.

104-007.07 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for a Specific and Definite Period of Time

104-007.07A Credentials voluntarily surrendered or limited for a specific and definite period of time as agreed to between the holder and Department pursuant to Neb. Rev. Stat. § 71-161.11, will be automatically restored at the expiration of that period of time.

104-007.07B If an individual has practiced while her/his credential was voluntarily surrendered for a specific and definite period of time, the Department may assess an administrative penalty pursuant to 172 NAC 104-010.

104-007.08 Credentials Voluntarily Surrendered or Limited Permanently: Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

104-008 GROUNDS ON WHICH THE DEPARTMENT MAY DENY, REFUSE RENEWAL OF, OR DISCIPLINE A CERTIFICATE

104-008.01 The Department, upon the recommendation of the Boards, may deny, refuse renewal of, limit, suspend, revoke, or have other disciplinary measures taken against certificates for any of the acts or offenses set forth in Neb. Rev. Stat. §§ 71-147 and 71-148 of the Uniform Licensing Law or for violations of the Nebraska Certified Nurse Midwifery Practice Act.

104-008.02 The Department, upon the recommendation of the Boards, may deny, refuse renewal of, limit, suspend, revoke, or have other disciplinary measures taken against certificates for unprofessional conduct, which term includes but is not limited to:

1. Misappropriating medications, supplies, or personal items of a patient or agency;
2. Violating the confidentiality of information or knowledge concerning the patient;
3. Committing any act which endangers patient safety or welfare;
4. Failure to seek consultation and collaboration or failure to refer a patient when warranted by patient condition;
5. Practice of the profession without a current active certificate or temporary permit;
6. Failure of a certificate holder, who is the subject of a disciplinary investigation, to furnish the Boards or their investigator with requested information or requested documents;
7. Falsification or misrepresentation of material facts in attempting to procure employment as a CNM;
8. Intentional falsification of material facts in a material document connected with the practice of nursing in the expanded role of nurse midwifery;
9. Kissing, fondling, touching or engaging in any other activities of a sexual nature with a patient; and
10. Violating any term of probation, condition, or limitation imposed on the certificate holder by the Department.

104-009 SCHEDULE OF FEES: The following fees have been set by the Department by this regulation to be paid as a condition of issuance of certification.

104-009.01 Initial Certification Fee: By an applicant for a certificate to practice as a CNM, the fee of \$30. If the applicant's primary state of residence is another compact state, s/he must also pay the Licensee Assistance Program fee of \$1 for each year remaining in the current biennial period.

104-009.02 Proration of Initial Certification Fee: For issuance of a certificate that will expire within 180 days after its initial issuance date, a fee of \$25. If the applicant's primary state of residence is another compact state, s/he must also pay the Licensee Assistance Program fee of \$1. The certificate will be valid until the next subsequent renewal date.

104-009.03 Certificate Renewal Fee: By an applicant for renewal on a biennial basis of a certificate to practice as a CNM, the fee of \$30. If the applicant's primary state of residence is another compact state, s/he must also pay the Licensee Assistance Program fee of \$2.

104-009.04 Certificate Reinstatement Fee: By an applicant for reinstatement of a certificate to practice as a CNM, the fee of \$30 in addition to the renewal fee.

104-009.05 Late Fee: By an applicant for a renewal on a biennial basis of a certificate to practice as a CNM, who fails to pay the renewal fee on or before the expiration date of his/her certificate, the fee of \$25 as a late fee in addition to the renewal fee.

104-009.06 Certification of Certificate Fee: For issuance of a certification of a certificate, the fee of \$25. The certification includes information regarding:

1. The basis on which the certificate was issued;
2. The date of issuance;
3. Whether disciplinary action has been taken against the certificate; and
4. The current status of the certificate.

104-009.07 Verification of Certificate Fee: For issuance of a verification of a certificate, the fee of \$5. The verification includes written confirmation as to whether the certificate was valid at the time the request was made.

104-009.08 Duplicate Certificate Fee: For a duplicate of an original certificate document or reissued certificate, the fee of \$10.

104-009.09 Administrative Fee: For a denied certificate or a withdrawn application, an administrative fee of \$25 will be retained by the Department.

104-009.10 Reinstatement Fee: For reinstatement following suspension, limitation, or revocation for disciplinary reasons, the fee of \$75.

104-010 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person practices without a certificate. Practice without a certificate for the purpose of this regulation means practice:

1. Prior to the issuance of a certificate;
2. Following the expiration of a certificate; or
3. Prior to the reinstatement of a certificate.

104-010.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without a certificate:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaging in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, or treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice; or
6. The person opens a practice site and announces or advertises that the site is open to provide service, care, or treatment.

For purposes of this regulation, prima facie evidence means a fact is presumed to be true unless disproved by some evidence to the contrary.

104-010.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a certificate. To assess such penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice will specify:
  - a. The total amount of the administrative penalty;
  - b. The evidence on which the administrative penalty is based;
  - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
  - d. That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and
  - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

104-010.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department must hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's Rules of Practice and Procedure.