

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED
WAIVER PROGRAMS
PART 17 REQUIREMENTS FOR FREESTANDING BIRTH CENTERS

8.370.17.1 ISSUING AGENCY: New Mexico Health Care Authority, Division of Health Improvement.
[8.370.17.1 NMAC - N, 7/1/2024]

8.370.17.2 SCOPE:

A. These regulations apply to public, for profit and non-profit freestanding birth centers providing the services specified in these regulations. Any freestanding birth center providing services specified in these regulations must be licensed under these regulations prior to obtaining federal certification.

B. These regulations do not apply to:

- (1)** hospitals that provide labor and delivery services under their hospital license;
- (2)** births performed in a private residence by licensed midwives or certified nurse midwives acting within the scope of their license; and
- (3)** offices and treatment rooms of a licensed private practitioners.

[8.370.17.2 NMAC - N, 7/1/2024]

8.370.17.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, Subsection R of Section 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.

[8.370.17.3 NMAC - N, 7/1/2024]

8.370.17.4 DURATION: Permanent.

[8.370.17.4 NMAC - N, 7/1/2024]

8.370.17.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.370.17.5 NMAC - N, 7/1/2024]

8.370.17.6 OBJECTIVE:

A. To encourage the establishment and maintenance of freestanding birth centers which provide quality care within a safe home like environment for mothers and infants.

B. To establish minimum standards for licensing of freestanding birth centers that provide birthing services different from, and outside the acute care hospital setting, while promoting safety and quality care for mothers and infants.

C. To monitor freestanding birth center compliance under these regulations through surveys and to identify any facility areas in which could be dangerous or harmful.

[8.370.17.6 NMAC - N, 7/1/2024]

8.370.17.7 DEFINITIONS:

A. Definitions beginning with “A”:

(1) “AABC” means American association of birth centers.

(2) “Administrator” means the person who is delegated the administrative responsibility for interpreting, implementing, and applying policies and procedures at the birth center. The administrator is responsible for establishing and maintaining safe and effective management, control and operation of the facility and all of the services provided at the facility, including fiscal management. The administrator must meet the minimum administrator qualifications in these regulations.

(3) “Applicant” means the individual or legal entity that applies for a license. If the applicant is a legal entity, then the individual signing the license application on behalf of the legal entity must have written legal authority from the legal entity to act on its behalf and execute the application. The license applicant must be the legal owner of the facility.

(4) **“Apprentice midwife”** means an individual as defined in and licensed under 16.11.3 NMAC, as amended, and currently in good standing.

(5) **“ACNM”** means the American college of nurse midwives.

B. Definitions beginning with “B”:

(1) **“Basic life support” (BLS)** means training and current certification in adult cardiopulmonary resuscitation equivalent to American heart association class C basic life support and in emergency treatment of a victim of cardiac or respiratory arrest through cardiopulmonary resuscitation and emergency cardiac care.

(2) **“Birth assistant”** means a staff person over the age of 18 who is capable of recognizing complications and who can care for the mother and infant by performing normal postpartum and newborn care. At a minimum, a birth assistant must be trained and have current certifications in BLS and neonatal resuscitation program (NRP) and can only function under the direct supervision of a licensed provider immediately available on site.

(3) **“Birth center” (BC)** means a freestanding birth center licensed by the state for the primary purpose of performing low-risk deliveries that is not a hospital, attached to a hospital or in a hospital, and where births are planned to occur away from the mother’s residence following a low-risk pregnancy.

(4) **“Birth room” or “birthing room”** means a private room of sufficient size to accommodate a client in active labor with the equipment and personnel necessary to assist the mother in a safe birth and in full compliance with the minimum standards in these regulations. Any facility with four or more birthing rooms must also comply with the birthing room and center requirements in the current edition of the facility guidelines institute, guidelines for design and construction, specific requirements for freestanding birth centers.

C. Definitions beginning with “C”:

(1) **“CABC”** means the commission for the accreditation of birth centers.

(2) **“Certified nurse midwife”** means a licensed individual educated in the two disciplines of nursing and midwifery as defined and licensed under 16.11.2 NMAC, as amended, and currently in good standing.

(3) **“Certified nurse practitioner”** means a registered nurse as defined and licensed under the Nursing Practice Act, Section 61-3-23.2 NMSA 1978, as amended, and related regulations and is currently in good standing.

(4) **“CLIA”** means clinical laboratory improvement amendments of 1988 as amended.

(5) **“Client”** means any person who receives care, including a mother, infant or newborn, at a freestanding birth center.

(6) **“Compliance”** means the facility’s adherence to these regulations, as well as any and all other applicable state and federal statutes and regulations. Compliance violations may result in sanctions, civil monetary penalties and revocation or suspension of the facility license.

D. Definitions beginning with “D”:

(1) **“Deficiency”** means a violation of or failure to comply with any provision(s) of these regulations.

(2) **“Doula”** means a trained, nonmedical professional who provides services, including health education, advocacy or physical, emotional or social support, to a person during the pre-conception period, pregnancy, childbirth or the postpartum period to promote positive health outcomes.

E. Definitions beginning with “E”:

(1) **“Employee”** means any person who works at the facility and is a direct hire of the owner or management company, if applicable.

(2) **“External quality committee”** means the members of the internal quality committee and an external peer reviewer or a clinical consultant and any other facility healthcare partners, as available.

F. Definitions beginning with “F”: **“Facility”** means the physical premises, building(s) and equipment where the freestanding birth center services are provided, whether owned or leased and which is licensed pursuant to these regulations.

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: [RESERVED]

I. Definitions beginning with “I”:

(1) **“Incident”** means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(2) **“Incident management system”** means the written policies and procedures adopted or developed by the licensed health facility for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(3) **“Incident report form”** means the reporting format issued by the authority for the reporting of incidents or complaints.

(4) **“Internal quality committee”** means and includes the administrator and clinical director at a minimum. If the administrator and clinical director are the same person, another staff person with clinical experience must serve on the internal quality committee. Other staff at the facility may also serve on this committee as deemed appropriate.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **“License”** means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate a birth center for a specified period of time, at the physical premises, not to exceed one year.

(2) **“Licensee”** means the person(s) or legal entity that operates the physical premises and facility and in whose name the facility license has been issued and who is legally responsible for compliance with these regulations.

(3) **“Licensed midwife”** means a licensed individual as defined and licensed under 16.11.3 NMAC, as amended, currently in good standing.

(4) **“Licensed practical nurse”** means a licensed individual as defined and licensed under the Nursing Practice Act, Section 61-3-19 NMSA 1978, as amended, currently in good standing.

(5) **“Licensing authority”** means the New Mexico health care authority.

(6) **“Low risk pregnancy”** means a pregnancy that is determined by documented medical history, risk assessment, and prenatal care that reasonably predicts an outcome of a normal and uncomplicated labor and birth.

M. Definitions beginning with “M”:

(1) **“Management company”** means the legal entity that manages the facility, if different from the legal owner of the facility.

(2) **“Midwife”** means a licensed individual authorized to practice midwifery in New Mexico as defined and licensed under 16.11.2 NMAC, as amended, or 16.11.3 NMAC, as amended, currently in good standing.

N. Definitions beginning with “N”:

(1) **“NFPA”** means the national fire protection association which sets codes and standards for building fire safety.

(2) **“NMSA”** means the New Mexico Statutes Annotated 1978 compilation and all subsequent amendments, revisions and compilations.

(3) **“Neonatal resuscitation program” (NRP)** means training and current certification in both the NRP module on medications and the module on intubation using an endotracheal tube (ET) or laryngeal mask airway (LMA) or both, endorsed by American academy of pediatrics or the American heart association.

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”:

(1) **“Physician”** means a licensed individual, currently in good standing, authorized to practice medicine as defined and licensed under the New Mexico Medical Practice Act, Sections 61-6-1 to 61-6-34 NMSA 1978, as amended, and related regulations or osteopathic medicine as defined and licensed under Sections 61-10-1 to 61-10-22 NMSA 1978, as amended, and related regulations.

(2) **“Physician's assistant”** means an individual, currently in good standing, who is licensed and authorized to provide services to patients under the supervision and direction of a licensed physician under the Physician Assistant Act, Sections 61-6-7 to 61-6-10 NMSA 1978, as amended and related regulations, or is authorized and licensed to provide services to patients under the supervision and direction of a licensed osteopathic physician under the Osteopathic Physicians' Assistants Act, Sections 61-10A-1 to 61-10-7 NMSA 1978 as amended, and related regulations.

(3) **“Plan of correction” (POC)** means the plan submitted by the licensee or its representative(s) addressing how and when deficiencies identified through a survey or investigation will be corrected. A plan of correction is a public record once it has been approved by the regulatory authority and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a facility license, including to prove licensee compliance violations or failures.

(4) **“Policy”** means a written statement that guides and determines present and future facility decisions and actions.

- (5) **“Premises”** means all of the facility including buildings, grounds and equipment.
- (6) **“Procedure”** means the action(s) that must be taken in order to implement a written

policy.

Q. Definitions beginning with “Q”:

(1) **“Quality assurance”** means the licensed health care facility’s on-going comprehensive self-assessment of compliance with these regulations and any and all other applicable statutes and regulations including, but not limited to, the facility’s own policies and procedures and incident investigations, documentation, reporting and reviewing of all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents for study and improvement of the facility’s organizational, administrative and preventative practices in employee training and reporting.

(2) **“Quality improvement system”** means a systematic approach to the continuous study and improvement of the efficacy of organizational, administrative and clinical practices to meet the needs of persons served, address any changing regulatory requirements and achieve the facility’s mission, values and goals.

R. Definitions beginning with “R”: “Registered nurse” means an individual, currently in good standing, who is licensed and authorized to provide nursing services under the Nursing Practice Act, Sections 61-3-1 to 61-3-30 NMSA 1978, as amended, and related regulations.

S. Definitions beginning with “S”:

(1) **“Scope of practice”** means the procedures, actions, and processes that a healthcare practitioner is permitted to undertake under the terms of their professional license. The scope of practice is limited to that which the applicable law allows for specific education, training, experience and demonstrated competency.

(2) **“Staff”** means any person who works at the facility, and includes employees, contracted persons, independent contractors and volunteers who perform work or provide goods and services at the facility.

T. Definitions beginning with “T”: [RESERVED]

U. Definitions beginning with “U”: “U/L approved” means approved for safety by the national underwriters laboratory.

V. Definitions beginning with “V”:

(1) **“Variance”** means a written decision, made at the licensing authority’s sole discretion, allowing a licensee and facility to deviate from a portion(s) or provision of these regulations for a specified time period not exceeding a year, providing the variance does not jeopardize the health, safety or welfare of the facility’s clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations.

(2) **“Violation”** means any and all actions or procedures by the facility or licensee that are not in compliance with these regulations and any and all other applicable state and federal statutes and regulations.

W. Definitions beginning with “W”: “Waive” or “waiver” means a written decision, made at the licensing authority’s sole discretion, to allow a birth center to refrain from complying with a portion(s) or provision of these regulations for a limited and specified time period not exceeding a year, providing the waiver does not jeopardize the health, safety or welfare of the facility’s clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations.

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

[8.370.17.7 NMAC - N, 7/1/2024; A, 5/5/2026]

8.370.17.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory compliance. “May” means permissive compliance. The words “adequate”, “proper”, and other similar words mean the degree of compliance that is generally accepted throughout the professional field by those who provide birthing services to the public in facilities governed by these regulations. However, if any other applicable statute or regulation requires mandatory or stricter compliance for birth center services than these regulations, the licensee and facility must comply with the more strict compliance requirements.

[8.370.17.8 NMAC - N, 7/1/2024]

8.370.17.9 FREESTANDING BIRTH CENTER SCOPE OF SERVICES:

A. General scope of services. Freestanding birth centers endorse the wellness care model by providing supportive care and using interventions only when medically necessary. Birth centers may provide women’s health services including annual exams, contraception counseling, pre-conception counseling, sexually transmitted infection testing and treatment, prenatal care, birth services, and postpartum and newborn care following

a normal, low risk pregnancy. The facility may offer other health services by licensed professionals working within the scope of their license providing the physical space used by the other services is clearly delineated and separate from the birth center services, the other services do not interfere with any birth center requirements, the facility complies with any applicable licensing regulations for the other services, and the authority is capable of determining the physical boundaries between the birth center facilities licensed under these regulations and other facilities, if licensed under other regulations.

B. Limitations on scope of services. Except in the event of an emergency, surgical procedures shall be limited to those normally performed during birth, but may include episiotomy and repair, other procedures for newborns, and well women's care but only if such procedures are performed by a licensed practitioner acting within the scope of the practitioner's license. Trials of labor after cesarean section (TOLAC) and vaginal birth after cesarean (VBAC) services shall only be performed at a freestanding birth center by a practitioner whose license authorizes this scope of practice.

C. Services not allowed and not to be performed at freestanding birth center. The following services shall not be performed in a freestanding birth center:

- (1) general, regional or epidural anesthesia services;
- (2) medications for cervical ripening, induction or augmentation of labor;
- (3) operative vaginal forceps or vacuum or abdominal births; and
- (4) abortions.

D. Geographic requirements:

- (1) Freestanding birth centers shall be located within a maximum of 30 minutes normal driving time from a referral hospital. Reliable evidence of normal driving time must be provided.
- (2) The authority may, at its sole discretion, approve a variance for a freestanding birth center that is located more than 30 minutes normal driving time from a referring hospital, if the authority finds that the health and safety of the birth center clients will not be adversely affected.

E. Additional requirements applicable to facilities with four or more birthing rooms. Any and all facilities with four or more birthing rooms shall comply with all of these regulations and also with all applicable requirements in the current edition of the facility guidelines institute's guidelines for design and construction, specific requirements for freestanding birth centers.

[8.370.17.9 NMAC - N, 7/1/2024]

8.370.17.10 LICENSE REQUIRED: A freestanding birth center facility shall not be operated without a license issued by the authority. Any freestanding birth center or facility operating after the effective date of these regulations, must be licensed under these regulations. Any facility providing the services described in these regulations after the effective date of these regulations, shall apply for a freestanding birth center license within 180 days. Any unlicensed freestanding birth center that has not applied for a license, may only continue to operate without a license for 180 days from the effective date of these regulations. A freestanding birth center licensed under these regulations shall not assert, represent, offer, provide or imply that the facility is or may render care or services other than the services it is permitted to render under these regulations and within the scope of all applicable professional license(s). If an unlicensed freestanding birth center is found to be providing services for which a license is required under these regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The licensed facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

[8.370.17.10 NMAC - N, 7/1/2024]

8.370.17.11 INITIAL LICENSURE PROCEDURES: These regulations should be thoroughly understood and used by the applicant, when applying for the initial freestanding birth center license. The applicant for an initial facility license under these regulations must follow these procedures when applying for a license.

A. Notification and letter of intent: The owner shall advise the licensing authority of its intent to open a freestanding birth center pursuant to these regulations by submitting a letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the owner and the facility and at a minimum, include the following:

- (1) the name of facility;
- (2) the name of the legal owner and licensee and the type of legal entity under which the facility shall be owned;
- (3) the name of the management company, if any;
- (4) the type of facility license requested;

- (5) the anticipated number of clients to be served;
- (6) the number of birthing rooms in the proposed facility;
- (7) the physical address of facility including building name or suite number;
- (8) the mailing address, if different from physical address;
- (9) the contact name(s), address, e-mail address, and telephone number(s);
- (10) the anticipated payers and sources of reimbursement; and
- (11) a list of all services, medical and non-medical, to be provided at the facility location

which is requesting the license.

B. License application and fees: After review by the authority of the letter of intent for general compliance with these regulations and verification that an application is appropriate under these regulations, the owner shall be required to complete a license application on a form provided by the authority. Prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the authority, the applicant must submit to the licensing authority an application form provided by the authority, fully completed, printed or typed, dated, signed, and notarized accompanied by the required fee. If electronic filing of license applications is available at the time of application, the applicant will be required to follow all electronic filing requirements, and may forgo any notary requirements, if specifically allowed under the applicable electronic filing statutes, regulations and requirements. Current fee schedules will be provided by the licensing authority. The authority reserves the right to require additional documentation to verify the identity of the applicant in order to verify whether any federal or state exclusions may apply to the applicant. Fees must be paid in the form of a certified check, money order, personal, or business check, or electronic transfer (if available), made payable to the state of New Mexico, and are non-refundable.

C. Existing facility and building plans: As part of the initial license application, the applicant must also attach to the application and submit to the authority, a set of building plans which includes all of the information required by these rules, accompanied by proof of zoning approvals by the applicable building authority. The existing facility building plans must be of professional quality, on substantial paper measuring at least 24" x 36", and drawn to an accurate scale of one-eighth inch to one foot. The plans for existing construction must include sufficient information for the authority to make a compliance determination and at a minimum:

- (1) floor plans showing proposed use of each room, (e.g., waiting room, examination room, office, etc.);
- (2) interior dimensions of all rooms;
- (3) one building or wall section showing an exterior and interior wall construction section including the material composition of the floor, wall, and ceiling/roof, and the finishes, (e.g., carpet, tile, gypsum board with paint, or wood paneling);
- (4) door locations and types (swing) and sizes of all doors, including width, height and thickness;
- (5) location of all sinks, tubs and showers;
- (6) location and operation of windows including size and type;
- (7) location and dimension of all level changes within and outside the building, (e.g., steps or ramps);
- (8) location of fire extinguishers, heat and smoke detectors, and operational elements of alarm systems;
- (9) location of heating units, furnaces, hot water heaters, and fuel type and source;
- (10) all heating, ventilating and air conditioning/cooling systems;
- (11) location of the building on a site/plot plan to determine surrounding conditions, include all steps, ramps, parking areas, handicapped spaces, walks and any permanent structures, including construction materials; and
- (12) all existing construction, new construction, remodeled portions, and proposed additions, must be delineated on the plans, clearly indicating where existing construction ends and proposed remodeling and new construction begins.

D. Remodeling, new and proposed construction: If the proposed facility includes any remodeling, renovations or additions to an existing building or new construction of any type, building plans and specifications covering all portions of the proposed work delineating all existing construction and all new and proposed construction shall be attached to the application and submitted to the authority for review and approval as part of the application. Building plans will be reviewed by the authority for compliance with current licensing regulations, building and fire safety codes. If the facility's building plans are approved by the authority and local building officials have issued a construction permit, construction may begin. This provision is an ongoing requirement and

applies to, and includes any and all construction at the facility, which occurs before and after issuance of the initial license. This provision does not generally apply to maintenance and repair. However, if the maintenance or repair impacts or alters any of the facility requirements under these regulations, the applicant or licensee must notify the authority and verify ongoing compliance with these regulations. The authority shall not be liable for any costs or damages incurred by the applicant relating to construction in the event the applicant incurs costs or damages in order to comply with these regulations or to obtain a license under these regulations. For all new and proposed construction, the applicant or licensee must submit for approval by the authority before construction begins, the following:

- (1) one copy of building plans and specifications, including a site plan, that are of professional quality, on substantial paper measuring at least 24" x 36" and drawn to an accurate scale of one-eighth inch to one foot;
- (2) the building plans must be drawn to scale and show the general arrangement of the buildings, and include a room schedule, show fixed equipment for each room, and list room numbers, together with all other pertinent explanatory information addressing the requirements in applicable regulations;
- (3) any changes in the approved building plans affecting compliance with these rules shall be shown on the approved plans and shall be submitted to the authority for approval before construction is undertaken;
- (4) any and all completed new construction shall comply with the plans and specifications approved by the authority prior to construction, these rules, and any and all other applicable rules and codes; and
- (5) any of the authority's approval(s) shall not waive any other rules or other applicable building and code requirements enforceable by other authorities.

E. Initial survey phase: Upon receipt of a properly completed application with all necessary supporting documentation, an initial life safety survey of the proposed facility will be scheduled by the licensing authority. Upon completion of the initial life safety survey and determination that the facility is in compliance with all life safety and building requirements, the licensing authority may issue a temporary license pending completion of its initial health survey or an annual license if allowed or applicable under these regulations.

[8.370.17.11 NMAC - N, 7/1/2024]

8.370.17.12 ADDITIONAL DOCUMENTS REQUIRED WITH LICENSE APPLICATION: The authority reserves the right to require an applicant to provide any and all additional documents, as part of its license application, in order for the authority to determine whether the applicant and the facility are in full compliance with these regulations, as well as any and all other applicable statutes and regulations. At a minimum, additional documents required to be attached to the initial license application, include, but are not limited to:

A. Building approvals: The applicant must submit all building approvals required for the facility to operate in the jurisdiction in which it is located, including, but not limited to:

- (1) written building approvals and certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and
- (2) written fire safety approvals from the fire safety authority having jurisdiction.

B. Environment approvals: If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:

- (1) private water supply;
- (2) private waste or sewage disposal; and
- (3) ultrasound equipment.

C. Board of pharmacy approvals: A copy of facility's drug permit issued by the state board of pharmacy must be provided.

D. Program outline: The applicant must submit with its license application a program outline consistent with these regulations which includes at a minimum, the following information:

- (1) a list of all services and the scope of those services to be provided by the proposed facility;
- (2) projected number of clients to be served monthly;
- (3) a list of staffing and personnel requirements and duties to be performed;
- (4) a list of all services that will be contracted or arranged with any other health providers including ambulance services, admitting hospitals, consultation with medical practitioners, laboratory work and equipment providers;
- (5) the number of examination rooms, birth rooms, family rooms and other rooms for diagnostic or other use including, but not limited to,, ultrasound, laboratory, clean linen storage and waste disposal;

- (6) an organizational structure diagram or chart including the administrator, advisory body or board of directors, if any, staff, clinical director, internal quality committee and external quality committee; and
- (7) quality improvement systems and quality assurance processes.

E. Policies and procedures: The applicant must submit with its license application a copy of the facility's policies and procedures which must comply with these regulations.

F. Policies and procedures for doula access:

(1) adopt and maintain written policies and procedures authorizing a patient to select a doula of the patient's choice to accompany the patient within the facility's premises for the purposes of providing services during pregnancy, childbirth and the twelve-month postpartum period;

(2) provide a written copy of the policies and procedures adopted pursuant to Paragraph (1) of this subsection to:

(a) health care providers providing services related to pregnancy, childbirth or the twelve-month postpartum period at the facility;

(b) patients receiving services related to pregnancy, childbirth or the 12-month postpartum period at the facility; and

(c) any other person, at the request of the patient; and

(3) post a notice of the facility's policies and procedures adopted pursuant to Paragraph (1) of this subsection:

(a) in the room of a patient admitted to the facility for services related to pregnancy, childbirth or the twelve-month postpartum period; and

(b) on the facility's website.

[8.370.17.12 NMAC - N, 7/1/2024; A, 5/5/2026]

8.370.17.13 LICENSE TYPES, VARIANCES & WAIVERS:

A. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license to a new freestanding birth center before clients are admitted or for facilities that existed prior to enactment of these regulations, provided that the freestanding birth center has submitted a license application, supporting documents, has met all of the applicable life safety code requirements, and its program, policies, and procedures have been reviewed for compliance with these regulations. A temporary license is not guaranteed under these regulations and shall be limited and restricted to:

(1) a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies;

(2) no more than two consecutive temporary licenses shall be issued in accordance with applicable statutes and regulations;

(3) the facility being allowed to accept clients and provide care services, subject to any requirements and restrictions attached to the temporary license;

(4) a finding that the applicant is qualified and in full compliance with applicable life safety code requirements; and

(5) any determination of compliance or noncompliance for a temporary license or initial license shall be made at the licensing authority's sole discretion based upon the health, safety, or welfare of the facility's clients, patients and staff and proof by the applicant that it is not in violation of other applicable state and federal statutes and regulations.

B. Annual license: An annual license is issued for a one-year period to a freestanding birth center facility which has met all requirements of these regulations. If a temporary license is issued, once the authority has issued a written determination of full compliance with these regulations, an annual license will be issued with the renewal date of the annual license based upon the initial date of the first temporary license.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator or when there is a change of name for the facility, but an amended license shall only be issued if the administrator is not an owner. If the administrator is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

(1) be on a form, or filed electronically if available, as required by the licensing authority;

(2) be accompanied by the required fee for the amended license; and

(3) be submitted within 10 working days of the change.

D. Variances and waivers: At the licensing authority's sole discretion, an applicant or licensee may be granted variances and waivers of these regulations, provided the granting of such variance or waiver shall not jeopardize the health, safety or welfare of the facility's clients, patients and staff and is not in violation of other

applicable state and federal statutes and regulations. All variances and waivers shall be in writing attached to the license and shall be limited to the term of the license. Upon renewal of a license, any variances and waivers shall only be extended or continued at the sole discretion of the licensing authority providing such variance or waiver shall not jeopardize the health, safety or welfare of the facility's clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations at the time of renewal. Variances and waivers are non-transferrable and shall not be granted indefinitely.

[8.370.17.13 NMAC - N, 7/1/2024]

8.370.17.14 LICENSE RENEWAL:

A. Licensee must submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the facility complies with all applicable state and federal regulations in force at the time of renewal and that there has been no new construction or remodeling or additions which differ from the plans provided and reviewed with the prior license application. If there has been any construction or remodeling or additions to the facility since issuance of the last license, and the construction has not been previously approved, the license renewal applicant shall be required to comply with all construction documentation requirements under these regulations when applying for the license renewal. The authority reserves the right to require that a renewal applicant provide any and all additional documents, including any necessary proof of current compliance, as part of its license renewal application in order for the authority to determine whether the applicant and the facility are in full compliance with these regulations.

B. Upon receipt of the renewal application and the required fee, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the facility is in substantial compliance with these regulations and any and all other applicable state and federal regulations.

C. If the existing license expires and the licensee has failed to submit a renewal application, the authority may charge the applicant a late fee of \$100 for each month or portion of a month that the facility continues to operate without a license providing that during such time the facility remains in full compliance with these regulations. If the facility does not renew its license and continues to operate without paying late fees and without being in full compliance with these regulations, the facility shall cease operations until it obtains a new license through the initial licensure procedures, and shall still be required to pay late fees. Under Section 24-1-5 NMSA 1978, as amended, no freestanding birth center shall be operated without a license and any such failure may subject the operators to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

D. It shall be the sole responsibility and liability of the licensee to be aware of the status, term and renewal date of its license. The licensing authority shall not be responsible to notify the facility of the renewal date or the expiration date of the facility's license.

E. After issuance of the initial license, if there has been no construction or remodeling or additions to the facility and the facility is in substantially the same condition as the plans on file with the authority, the facility may be issued a license renewal based upon its accreditation status if it has been fully accredited by an approved national accrediting organization such as, the commission for the accreditation of birth centers or its successor, and the facility maintains its accreditation status throughout the course of the license term. The licensee shall be responsible for providing verifiable evidence of accreditation status with its license renewal application and any time during the term of its license upon request. The authority, at its sole discretion, reserves the right to require additional documentation of compliance with these regulations and all applicable state and federal statutes and regulations by the licensee at the time of license renewal, even if the facility is accredited by an approved national accrediting organization.

[8.370.17.14 NMAC - N, 7/1/2024]

8.370.17.15 POSTING OF LICENSE: The facility's license must be posted in a conspicuous place on the licensed premises in an area visible to the public.

[8.370.17.15 NMAC - N, 7/1/2024]

8.370.17.16 NON-TRANSFERABLE RESTRICTION ON LICENSE:

A. A license granted under these regulations is not transferable to any other owner, whether an individual or legal entity, or to another location. The authority shall not guarantee or be liable for or responsible for guaranteeing the transfer of the license to any other owner or other location. The existing license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

- (1) any ownership interest in the facility changes;
- (2) the facility changes location;
- (3) the licensee of the facility changes; or
- (4) the facility discontinues operation.

B. Any owner or applicant wishing to continue operation of an already licensed facility must submit a new application for an initial license in accordance with these regulations at least 30 days prior to the anticipated change and shall not be guaranteed issuance of a license under the same terms and conditions of an existing license. Failure by any owner or new owner to apply for a new license under these conditions, while continuing to operate under these regulations, shall be considered a violation of these regulations and consent to the imposition of late fees, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.
[8.370.17.16 NMAC - N, 7/1/2024]

8.370.17.17 AUTOMATIC EXPIRATION OR TERMINATION OF LICENSE: An existing license shall automatically expire at midnight on the day indicated on the license, unless it is renewed sooner or it has been suspended or revoked. If a facility discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action. Failure by any owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and consent to the imposition of late fees, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.
[8.370.17.17 NMAC - N, 7/1/2024]

8.370.17.18 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: If immediate action is required to protect human health and safety, the licensing authority may act in accordance with Section 24-1-5 NMSA 1978, as amended, and suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.
[8.370.17.18 NMAC - N, 7/1/2024]

8.370.17.19 GROUNDS FOR DENIAL OF INITIAL OR RENEWAL LICENSE APPLICATION, SUSPENSION OR REVOCATION OF LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: An initial license application or a renewal license application may be denied, or an existing license may be revoked or suspended, or intermediate sanctions or civil monetary penalties may be imposed, after notice and opportunity for a hearing, for any of the following:

- A.** failure to comply with any provision of these regulations;
- B.** failure to allow access to the facility and survey(s) by authorized representatives of the licensing authority;
- C.** allowing any person to work at the facility while impaired physically or mentally or under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the clients, newborns, staff or visitors;
- D.** allowing any person, subject to all applicable statutes and regulations, to work at the facility if that person is listed on the employee abuse registry or considered an unemployable caregiver under the Caregivers Criminal History Screen Act, as amended, and related regulations, as amended or has a felony conviction for:
 - (1) homicide;
 - (2) trafficking controlled substances;
 - (3) kidnapping, false imprisonment, aggravated assault or aggravated battery;
 - (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses;
 - (5) crimes involving adult abuse, neglect or financial exploitation;
 - (6) crimes involving child abuse or neglect;
 - (7) robbery, larceny, burglary, fraud, extortion, forgery, embezzlement, credit card fraud or receiving stolen property; or
 - (8) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.
- E.** misrepresentation or falsification of any information on application forms or on other documents provided to the licensing authority or used by the licensing authority in granting or renewing a license;
- F.** repeat violations of these regulations or discovery of repeat violations during survey(s); or

G. failure to provide the required care and services specified in these regulations or providing care and services beyond the scope of the facility's license at the facility;

H. the list above shall not limit the authority from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.

[8.370.17.19 NMAC - N, 7/1/2024]

8.370.17.20 HEARING PROCEDURES: Hearing procedures for an administrative appeal of an adverse action taken by the authority against a facility's license will be held in accordance with applicable rules relating to adjudicatory hearings, including, but not limited to, 8.370.2 NMAC. A copy of the above regulations will be furnished at the time an adverse action is taken against a facility's license by the licensing authority, if the regulations cannot be obtained from a public website.

[8.370.17.20 NMAC - N, 7/1/2024]

8.370.17.21 FACILITY SURVEYS:

A. Application for licensure, whether initial or renewal, shall constitute permission for unrestricted entry into and survey of a facility by authorized licensing authority representatives at times of operation during the pendency of the license application, and if licensed, during the licensure period.

B. Surveys may be announced or unannounced at the sole discretion of the licensing authority. If, at the time of a facility survey, a client is in labor, birthing, or immediately postpartum, the survey may be rescheduled at the sole discretion of the licensing authority without penalty to the facility.

C. Upon receipt of a notice of deficiency from the licensing authority, the licensee or their representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of completion. All plans of correction for state or federal deficiencies, if any, shall be disclosed in compliance with applicable state or federal statutes and regulations. A state plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a facility license, including to prove licensee compliance violations.

D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

[8.370.17.21 NMAC - N, 7/1/2024]

8.370.17.22 REPORTING OF INCIDENTS: All facilities licensed under these regulations must comply with all incident intake, processing, training and reporting requirements under these regulations, as well as with any and all other applicable statutes and regulations. All facilities shall report to the licensing authority any serious incidents or unusual occurrences which have threatened, or could have threatened the health, safety and welfare of the clients, including, but not limited to:

A. fire, flood or other man-made or natural disasters including any damage to the facility caused by such disasters and any incident which poses or creates any life safety or health hazards;

B. any outbreak of contagious diseases and diseases dangerous to the public health;

C. any human errors by staff and employees which may or has resulted in the death, serious illness, or physical impairment of a client or newborn or staff; and

D. abuse, neglect, exploitation, injuries of unknown origin and other reportable incidents in accordance with 8.370.9 NMAC, as may be amended from time to time.

[8.370.17.22 NMAC - N, 7/1/2024]

8.370.17.23 QUALITY ASSURANCE, QUALITY IMPROVEMENT SYSTEM, INTERNAL QUALITY COMMITTEE, EXTERNAL QUALITY COMMITTEE AND POLICIES AND PROCEDURES: Each facility shall establish and maintain policies and procedures for quality assurance and quality improvement systems, as well as an internal quality committee and an external quality committee.

A. Policies and procedures: The administrator shall establish written policies and procedures which govern the facility's complete operation. The facility shall ensure that these policies are adopted, administered and enforced to provide quality health services in a safe environment. At a minimum, the facility's written policies and procedures shall include how the facility intends to comply with all requirements of these regulations and address:

(1) the facility organization including the legal entity or organization which owns the facility, any management companies or managers which manage the facility, the identity and credentials of the administrator responsible for establishing lines of responsibility and accountability for both licensed and non-licensed staff, and

the administrator's responsibility to direct employees or contractually retain qualified individuals providing fiscal management and all operations in the facility, as well as maintaining records of disclosure of conflicts of interest and all ownership interests and controlling parties;

(2) the facility administration including designation of an administrator with authority, responsibility, and accountability for overall administration and operation, including plans for the administrator's absence;

(3) the maintenance of the facility, equipment and supplies including sterilization and disinfection of supplies, equipment and instruments; cleaning of birthing room after each use; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures; and proper disposal of waste liquids used for cleaning contaminated areas;

(4) quality of care and services including appropriate and inappropriate admission criteria; client rights; client risk assessment; administration and preparation of drugs; quality assurance and performance improvement programs; referral of clients for additional services including, but not limited to, laboratory and sonography; transfer of clients to a hospital; ambulance transfer services; emergency procedures and resuscitative techniques; aseptic techniques; infectious waste and biohazard disposal in accordance with all applicable statutes and regulations; and safe handling of the placenta for families requesting to keep the placenta;

(5) staffing and personnel including written job descriptions for all staff with necessary qualifications consistent with these rules; minimum staffing and staff qualifications; and staff development and evaluation;

(6) maintenance of the client health record including protection of client confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of client records including appropriate document destruction procedures; and

(7) research procedures for any research being conducted at the facility in compliance with these regulations.

B. Internal quality committee: The internal quality committee is comprised at a minimum of the administrator and clinical director. If the administrator and the clinical director are the same person, another staff person with clinical experience shall be made a member of this committee. This committee shall establish and implement quality assurance and quality improvement systems monitoring and promoting quality care to clients through reviews that include chart review, data collection, client satisfaction surveys, and other program monitoring processes; data analyses; identification of areas for improvement; intervention plans, including action steps, responsible parties, and response time; and, evaluation of the effectiveness of interventions. The internal quality committee shall at a minimum, implement a thorough chart review process, as defined in these regulations, which considers and reviews outcome data analysis, targeted concern and improvement areas, client satisfaction surveys, and evidence based research to identify necessary quality improvement areas and processes. When areas of concern or potential problems are identified by the committee, the facility shall act as soon as possible to avoid and prevent risks to clients. The internal quality committee shall take and maintain meeting minutes. The internal quality committee shall, at a minimum, meet or convene:

(1) within 72 hours of every emergent or sentinel event to conduct an initial review and follow-up; if the internal quality committee consists of less than three people, the external quality committee shall convene to review emergent and sentinel events;

(2) monthly to document any significant events and any necessary quality care improvement steps to be applied to future events;

(3) quarterly for a detailed chart review, as provided in these regulations, of a minimum of five charts consisting of a minimum of one chart for each midwife and physician practicing at the facility; charts of all labor, postpartum, and newborn transfers; Apgar scores less than seven at five minutes; hemorrhage greater than 1000 ml; and any other significant problems encountered within the quarter;

(4) annually for review of policies and procedures, including, but not limited to:

- (a) environment of care;
- (b) testing and maintenance of equipment according to manufacturer's recommendations;

(c) housekeeping procedures;

(d) infection control procedures;

(e) privacy and security processes;

(f) compliance with policies and procedures for all emergency drills, including, but not limited to, fire, maternal/newborn emergencies, power failures, and natural disasters;

- (g) evaluation of maintenance policies and procedures for heat, ventilation, emergency lighting, waste disposal, water supply, laundry, and nourishment station;
- (h) annual employee performance evaluations;
- (i) clinical practice guidelines; and
- (5) submission of an annual quality report to the external quality committee.

C. External quality committee: The facility shall establish an external quality committee which includes the members of the internal quality committee, an external peer reviewer or a clinical consultant and other healthcare partners, if available. The external quality committee shall meet at least quarterly and perform an in-depth peer review case study on a minimum of five charts which include at a minimum one case for each midwife and physician practicing at the facility. The external quality committee shall also review the care of individual clients, targeted types of clients, and appropriateness of the clinical practitioner's judgment and management of the case under the facility's standards of care and policies, and make recommendations for care improvements. The external quality committee shall also discuss relevant evidence based research and make recommendations relating to clinical practice guidelines to improve quality of care.

[8.370.17.23 NMAC - N, 7/1/2024]

8.370.17.24 RISK ASSESSMENT, CLIENT ACCEPTANCE AND LABOR ADMISSION CRITERIA:

All licensed facilities shall follow and maintain written clinical practice guidelines which address, at a minimum, eligibility for care, on-going eligibility, medical consultation, and transfer criteria in accordance with the scope of practice authorized under each practitioner's individual license(s) to be reviewed and updated by the internal quality committee at least annually.

A. Risk assessment: A licensed practitioner shall make risk assessments of all clients that at a minimum include:

- (1) an initial assessment which documents the general health and eligibility of a potential client and which includes a detailed medical, social and family history, a physical examination, and routine prenatal labs; the assessment may also include ultrasounds to determine whether the client meets the criteria for the facility's scope of care;
- (2) completing, maintaining, and documenting an initial risk assessment and an on-going risk assessment in the client record which include compliance with admission criteria prior to client acceptance and throughout the pregnancy with the clinical director making the final determination of each client's risk;
- (3) if a client before 32 weeks gestation has failed to register for freestanding birth center care and has not received prenatal care, the client shall not be accepted for care at the facility unless the client obtains a medical consultation outside of the facility, meets all other eligibility criteria, and a written, signed exception is made by the clinical director on a case-by-case basis;
- (4) clear documentation of referrals, consultations and transfers to other providers for ineligible clients or medical transfers;
- (5) assessing each client's risk status on admission in labor and throughout labor for continuation of services;
- (6) whether the facility will have adequate space and sufficient staff to support the client newborn during labor, birth and postpartum;
- (7) written criteria for antepartum, intrapartum, postpartum and newborn acceptance and transfer to a hospital which delineates the transfer process from the facility to an accepting hospital; and
- (8) limitations on the number of active labor clients at the facility to the number of birth rooms available at the facility.

B. Ineligibility for admission: If any of the following conditions exist, birth at the facility shall be considered inappropriate or improper:

- (1) breech or non-vertex presentation at labor and delivery;
- (2) gestation less than 37 weeks or greater than 42 weeks;
- (3) multiple gestation;
- (4) medication controlled gestational diabetes mellitus; or
- (5) vaginal birth after cesarean (VBAC) candidates with more than one previous cesarean section, previous incision that is not low transverse, placenta location, anterior and low-lying over the old scar.

[8.370.17.24 NMAC - N, 7/1/2024]

8.370.17.25 CLIENT RIGHTS: All facilities licensed pursuant to these regulations shall support, protect, and respect clients' rights. Facility staff shall receive training on client rights and demonstrate understanding and

competence in the policies and procedures regarding client rights. Client rights will be posted or made available to facility clients in English or their preferred language. The method by which a client may register a complaint against the facility will be posted or otherwise made available to clients. The facility shall have and enforce policies and procedures which guarantee:

- A. the right to equal service, regardless of race, gender, gender identity, religion, ethnic background, sexual orientation, education, social class, physical or mental handicap, or economic status;
- B. the right to considerate, courteous and respectful care from all staff;
- C. the right to complete information using terms the average client can reasonably be expected to understand;
- D. the right to informed consent, full discussion of risks and benefits prior to any invasive procedure, except in an emergency, and advice regarding alternatives to the proposed procedure(s);
- E. the right to receive a written list of all services available, service costs and advanced notice of any changes;
- F. the right to receive care that is consistent with current scientific evidence about benefits and risks;
- G. the right for non-English speaking clients to obtain assistance in interpretation;
- H. the right to know the names, titles, professions and specific types and licenses held by the facility staff to whom the client speaks to and from whom services or information are received;
- I. the right to refuse examinations and procedures to the extent permitted by law and to be informed of the health and legal consequences of any refusal;
- J. the right of access to the client's personal health records;
- K. the right of respect for the client's privacy;
- L. the right of confidentiality of the client's personal health records as provided by law;
- M. the right to expect reasonable continuity of care within the scope of services and staffing;
- N. the right to have the client's civil rights, cultural background and religious opinions respected;
- O. the right to present complaints to the management of the facility without fear of reprisal; and
- P. the right to examine and receive a full explanation of any charges made by the facility regardless of source of payment.
- Q. the right to select a doula of the patient's choice to accompany the patient within the facility's premises for the purposes of providing services during pregnancy, childbirth and the twelve-month postpartum period.

[8.370.17.25 NMAC - N, 7/1/2024; A, 5/5/2026]

8.370.17.26 CLIENT HEALTH RECORD: The facility shall maintain client health records in a legible, uniform, complete and accurate format that provides continuity and documentation of maternal and newborn information which is readily accessible to health care practitioners, while protecting confidentiality, using a system that allows for reliable and safe storage, retrieval and loss prevention. The facility must use a record form appropriate for use by the practitioners in the facility which contains the required information necessary for transfer to an acute care maternal and newborn hospital.

A. Record contents: Each licensed facility must maintain a medical record for each client which may be in a paper or electronic format but which can be easily accessible, copied, provided, reviewed and transported in the event of any emergency or transfer. Every record must be accurate, legible and promptly completed. At a minimum, facility health records for each client must include written documentation of the following:

- (1) client demographics;
- (2) client consent forms;
- (3) pertinent medical, social, family, reproductive and nutritional history;
- (4) a list of medications that are currently prescribed for the client, including any self-administered over-the-counter medication or nutraceuticals, including dose of medication, route of administration, and frequency of use;
- (5) allergy list;
- (6) initial physical exam;
- (7) initial and on-going risk assessment and status;
- (8) laboratory, radiology and other diagnostic reports;
- (9) assessment of the health status and health care needs of the client;
- (10) evidence of continuous prenatal care including progress notes;
- (11) evidence of prenatal educational resources;

- (12) labor and birth summary;
- (13) postpartum care with evidence of follow-up within 48 hours of birth;
- (14) newborn care and follow-up;
- (15) appropriate referral of ineligible clients and documentation of transfer of care;
- (16) documentation of any consultations, special examinations and procedures;
- (17) discharge summary and applicable instructions to the client;
- (18) list of staff present during labor, birth and postpartum;
- (19) evidence that client rights have been provided to each client; and
- (20) consent form for participation in research signed by the client, if applicable.

B. Client records maintenance:

- (1) current client records shall be maintained on-site and stored in an organized, accessible and permanent manner, with copies easily accessible for review, transfers or in an emergency;
- (2) the facility shall have in place policies and procedures in compliance with applicable law, for maintaining and ensuring the confidentiality of client records, which include the authorized release of information from the client records; and the retention and transfer of client records at closure or ownership changes;
- (3) non-current client records shall be maintained by the facility against loss, destruction and unauthorized use for a period of not less than five years from the date of discharge and be readily available within 24 hours of request; if, any other applicable statutes or regulations require a longer term of record retention than five years, the longer term shall apply to the facility.

C. Chart review: At a minimum, a chart review performed by the internal quality committee shall consider written documentation of:

- (1) appropriateness of admissions and continuation of services;
- (2) complete client demographic information;
- (3) signed informed consent(s);
- (4) appropriate referral of ineligible clients;
- (5) continuous prenatal visits, beginning no later than 32 weeks;
- (6) continuous risk assessment throughout prenatal care and for admission in labor;
- (7) appropriate maternal and newborn follow-up after birth;
- (8) appropriateness of diagnostic and screening procedures;
- (9) complete initial history;
- (10) complete initial physical exam;
- (11) complete prenatal labs and screenings;
- (12) appropriateness of medications prescribed, dispensed or administered;
- (13) documentation of medical consultation, if indicated;
- (14) appropriate identification and management of complications;
- (15) appropriate transfer of care for maternal/fetal/newborn indications;
- (16) compliance with these rules;
- (17) compliance with policies, procedures and clinical practice guidelines for maternal and fetal assessment during labor and postpartum;
- (18) compliance with evidence based standards of practice;
- (19) effectiveness of staff utilization and training;
- (20) completeness of client records;
- (21) review of the management of care of individual clients or targeted types of clients or cases for the appropriateness of the clinical judgment of the practitioner(s) in obtaining consultation and managing the case relative to standards of care and policies; and make recommendations for any improvements of care; and
- (22) review and analyze outcome data and trends, and client satisfaction survey results.

[8.370.17.26 NMAC - N, 7/1/2024]

8.370.17.27 MINIMUM STAFFING REQUIREMENTS: Qualified and properly licensed professional and clinical staff shall provide quality family centered maternal and newborn care consistent with the scope of practice authorized under each individual practitioner's license(s). Direct care staff shall have access to consulting clinical specialists and support by administrative and ancillary personnel consistent with the volume of clients enrolled for care and the scope of services offered. The facility shall maintain adequate numbers of professional and support staff on duty, present on premises, and on-call to meet routine service demands, as well as high service demands and emergencies in order to assure client safety, satisfaction, and that no mother in active labor is unattended. The facility shall have on staff at a minimum:

- A. a midwife or physician on duty whenever there is a client in the facility in active labor or immediately postpartum;
 - B. a midwife or physician on immediate call whenever clients are in the facility receiving clinical services;
 - C. personnel trained in the use of emergency equipment and in BLS and NRP must be on duty whenever a client is within the freestanding birth center receiving clinical services; this includes nighttime hours when clients are within the freestanding birth center in labor or postpartum;
 - D. an on-site administrator managing the daily operations and implementing the policies and procedures;
 - E. a clinical director responsible for implementing facility clinical policies;
 - F. an internal quality committee that ensures the effectiveness of the quality assurance and performance improvement process at the facility; and
 - G. an external quality committee that provides in-depth peer review.
- [8.370.17.27 NMAC - N, 7/1/2024]

8.370.17.28 MINIMUM STAFF QUALIFICATIONS: The facility staff minimum qualifications shall be:

- A. **Administrator qualifications:** The administrator must:
 - (1) be at least age 21;
 - (2) have a high school diploma or general educational development (GED) certificate and two years of administrative or management experience;
 - (3) be a licensed healthcare professional; and
 - (4) if not a licensed healthcare professional, be a forty percent or greater owner in the facility with relevant business experience.
 - B. **Clinical director qualifications:** The clinical director shall be at least 21 years of age and must have the following qualifications:
 - (1) must be professionally licensed in a health care field;
 - (2) must have two years of birthing and labor experience; and
 - (3) must have two years of experience performing risk assessments to determine low risk pregnancy eligibility.
 - C. **Other clinical staff qualifications:** All other clinical staff must have the following qualifications:
 - (1) must be at least 18 years of age;
 - (2) must be licensed, certified or trained appropriately for the care provided; prior to providing direct client care, the clinical director shall verify qualifications and competence;
 - (3) must comply with any and all caregiver criminal history screening requirements and not be currently shown on any federal or state caregiver disqualification lists or certified nursing assistant (CNA) disqualification lists or the employee abuse registry.
 - D. **Staff at birth:** In addition to any and all other requirements for licensed professionals, each birth shall be attended by two persons currently trained in:
 - (1) adult cardiopulmonary resuscitation equivalent to American heart association class C BLS; and
 - (2) neonatal resuscitation endorsed by American academy of pediatrics/American heart association.
 - E. **Direct service staff:** Each staff member who provides direct medical services to clients, such as physicians, midwives, nurses, nurse practitioners and physician's assistants, who are required to be licensed, registered or certified by the state of New Mexico, must have a current license, registration or certificate from the state of New Mexico at the time they provide the services.
- [8.370.17.28 NMAC - N, 7/1/2024]

8.370.17.29 STAFF RECORDS: At a minimum, staff records shall include:

- A. **Personnel records:** Each facility licensed pursuant to these regulations must maintain complete written records for each staff member, employee, contractor and volunteer working at the facility, that are available for review upon request by the licensing authority. At a minimum, each person's records must contain the following:
 - (1) personal identification and demographic information;
 - (2) all qualifications;
 - (3) all current license(s) and training certification(s), including inoculations, if applicable;

- (4) annual performance evaluations;
- (5) documentation that the employee has read and received the personnel policies;
- (6) documentation of required occupational safety and health administration (OSHA) and Health Insurance Portability and Accountability Act (HIPAA) training; and
- (7) copy of caregiver criminal history screening clearance letter for all applicable caregivers including any volunteers acting as caregivers and documentation that the employee abuse registry has been reviewed to verify the staff person or caregiver is not a risk to client or newborn health, safety and welfare.

B. Staff scheduling records: The facility must:

- (1) keep weekly or monthly schedules covering all services;
- (2) document in each client record all staff present at labor, birth and postpartum through discharge; and
- (3) keep all schedules on file for a minimum of six months.

C. Staff evaluation and development: The facility must have written documented policies and procedures for staff orientation, on-going staff development, staff supervision and staff evaluation, which include but are not limited to the following:

- (1) client and facility emergency and safety procedures;
- (2) quality assurance and performance improvement programs; and
- (3) documentation of staff compliance with current licensure, certification, training and position requirements, including initial and annual training requirements.

[8.370.17.29 NMAC - N, 7/1/2024]

8.370.17.30 RESEARCH:

A. If a facility is conducting research activities, the facility must have written policies and procedures for conducting the research being done, documentation that the study has received institutional review board (IRB) approval and a consent form for each client involved in the research in the client's record.

B. When research is conducted by the facility or by the employees or by affiliates of the freestanding birth center or when the facility is used as a research site, such that the facility's clients and staff are involved in or the subjects of research; the research must be conducted by qualified researchers, having evidence in formal training and experience in the conduct of clinical, epidemiologic or sociologic research, in accordance with the written, approved research policies and procedures, by staff trained to conduct such research and in a manner that protects the client's health, safety and right to privacy and the facility and its clients from unsafe practices.

[8.370.17.30 NMAC - N, 7/1/2024]

8.370.17.31 PHARMACEUTICAL SERVICES:

A. One individual shall be designated responsibility for pharmaceutical services to include accountability and safeguarding.

B. Keys to the drug room or pharmacy must only be made available to authorized personnel by the individual having responsibility for pharmaceutical services.

C. Drugs and biologicals must be stored, prepared and administered in accordance with acceptable standards of practice, in compliance with all New Mexico state board of pharmacy requirements and in compliance with any and all other applicable federal and state statutes and regulations.

D. Outdated drugs and biologicals must be disposed of in accordance with methods required by the New Mexico state board of pharmacy.

E. Adverse reactions and allergies to medications must be reported to the licensed provider responsible for the client and must be documented in the client's record.

F. Blood products are limited to those used to prevent isoimmunization during and after pregnancy and shall only be administered by properly licensed personnel acting within the scope of their license.

G. Medication administration shall only be performed by a licensed provider acting within the scope of their license.

H. Blood, including whole blood, packed red cells, plasma, cryoprecipitate, or other blood factors may not be administered in a freestanding birth center facility.

[8.370.17.31 NMAC - N, 7/1/2024]

8.370.17.32 LABORATORY SERVICES:

A. A facility that provides on-site laboratory services shall meet all current CLIA regulations and must have a CLIA certificate appropriate to the level of testing (e.g., certificate of waiver, provider performed microscopy (PPM) or certification for moderately complex testing or waiver).

B. A facility that contracts out its laboratory services shall only contract with a laboratory that meets all current CLIA regulations and has CLIA certificates appropriate for all testing requested by the facility.

C. All lab test results performed either at the facility, or by contract, or by other arrangement must be entered into the client record(s).

D. All laboratory procedures shall be conducted in accordance with acceptable standards of practice.

E. Facilities that provide laboratory services or collect specimens for testing by outside CLIA laboratories must provide the following:

- (1) laboratory work counter(s) with a sink and electrical outlets;
- (2) lavatory or counter sink(s) equipped for hand washing, or alcohol-based hand sanitizer to decontaminate hands;
- (3) adequate storage for lab supplies;
- (4) specimen collection facilities with a toilet and lavatory;
- (5) blood collection facilities shall have seating space, a work counter and hand washing facilities;
- (6) appropriate storage facilities to ensure specimens are maintained at correct temperatures and to prevent any deterioration or contamination.

[8.370.17.32 NMAC - N, 7/1/2024]

8.370.17.33 INFECTION CONTROL:

A. The facility shall develop, implement and enforce written infection control policies and procedures to minimize the transmission of infection. Policies shall include educational course requirements; decontamination, disinfection, sterilization, and storage of sterile supplies; and cleaning and laundry requirements.

B. The facility shall provide sterilization equipment adequate to meet the requirements for sterilization of critical items. Equipment shall be maintained in accordance with the manufacturers' specifications, and operated to perform with accuracy, the sterilization of critical items. Live spore testing for the effectiveness of sterilization will be performed as defined by facility policy. Devices such as steri-gauges or sterilization tape will not be sufficient to assess the effectiveness of the sterilizers. The facility shall have a methodology to permit the backtracking of equipment use in case a sterilizer or any other medical equipment fails.

C. Where cleaning, preparation and sterilization functions are performed in the same room or unit, soiled or contaminated supplies and equipment shall be physically separated from the clean or sterilized supplies and equipment.

D. Each facility shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.

E. All special waste including blood, body fluids, placentas, sharps and biological indicators, shall be disposed of in accordance with OSHA and the New Mexico environment department standards for bio hazardous waste.

F. Each facility shall have written policies and procedures on terminal cleaning of birthing rooms to ensure infection control and client safety.

[8.370.17.33 NMAC - N, 7/1/2024]

8.370.17.34 EMERGENCY MEDICAL SERVICES: All freestanding birth centers shall have a written policy regarding emergency transfer for clients or newborns including emergency response personnel and accepting hospital facility which shall be followed in the event of an emergency.

A. Each facility must maintain and have easily accessible an emergency response cart(s) or emergency response tray(s) to provide emergency lifesaving procedures for an adult and newborn and comply with the following:

- (1) emergency response carts or trays shall be supplied with the drugs and biologicals commonly used in life saving procedures, along with supplies and equipment determined by the clinical director of the facility;
- (2) each emergency response cart or tray shall have lists of equipment and supplies to be maintained and ready and for use as an inventory guide;
- (3) emergency response carts or trays must be replenished as supplies or equipment are used;

(4) emergency response carts or trays shall be checked on a monthly basis for completeness and a log maintained with date and by whom the check was made; and
(5) all clinical staff must know the location of and be trained in the use of the emergency response.

B. Provisions for emergency calls:

(1) an easily accessible hard wired telephone for summoning help, in case of emergency, must be available in the facility and in the birthing room during a labor; and

(2) a list of emergency numbers including, but not limited to, fire department, police department, ambulance services, local hospital and poison control center must be prominently posted by the telephone(s).

[8.370.17.34 NMAC - N, 7/1/2024]

8.370.17.35 BUSINESS HOURS AND OPERATIONAL RECORDS: The facility shall post its hours of operation in a public location that can be seen by clients and visitors both inside and outside the facility. The facility shall keep all operational reports and records on file at the facility and make them available for review to document compliance with these regulations upon request of the licensing authority. Business and operational records shall include, but are not limited to:

A. names and addresses of all license owners, controlling parties, management company, if applicable, administrator, clinical director and all of the members of the internal and external quality committees;

B. a copy of the most recent version of the licensing regulations;

C. any and all agreements and contracts with other health care providers to provide services;

D. the most recent life safety and health surveys conducted by the licensing authority and any variances or waivers granted;

E. the most recent fire inspection report by the fire authority having jurisdiction;

F. a log of fire and emergency evacuation drills conducted by the freestanding birth center;

G. a valid and current state board of pharmacy drug permit;

H. the most recent state board of pharmacy inspection of the drug room;

I. the most recent CLIA certificate applicable for the type of specimens tested or waiver(s) for any specimen testing;

J. a log tracking infection control and sterilization processes demonstrating compliance with these regulations and all other applicable statutes and regulations;

K. if applicable, New Mexico environment department approval of private water system;

L. if applicable, New Mexico environment department approval of private waste and sewage disposal.

[8.370.17.35 NMAC - N, 7/1/2024]

8.370.17.36 BUILDING STANDARDS FOR FREESTANDING BIRTH CENTERS: The purpose of a freestanding birth centers is to establish a safe, homelike environment for healthy women anticipating a low risk birth so long as there is sufficient space, furnishings, equipment and supplies to comfortably accommodate the number of families, mothers, newborns and infants served by the facility and the staff necessary for providing the services.

A. The facilities may be in a house or residential structure adapted or renovated for birth center use, if allowed and approved by the local zoning authority.

B. If the facility is based in an office building, consultation and examining rooms must be separate from the dedicated birth room(s).

C. Freestanding birth centers must comply with life safety code requirements in accordance with the applicable national fire protection association (NFPA) 101 life safety code edition. Birth centers may be classified as business occupancies if their capacity is restricted to occupancy by fewer than four active births at any one time and the physical layout shall not render clients, not including infants, incapable of self-preservation.

D. All freestanding birth center facilities licensed under these regulations must be accessible to and useable by handicapped clients, employees, staff and visitors.

[8.370.17.36 NMAC - N, 7/1/2024]

8.370.17.37 MINIMUM FACILITY SPACE REQUIREMENTS: Each facility shall include and provide sufficient space for the following areas:

A. Public areas: The facility shall provide in the public areas:

(1) sufficient parking space(s) for the public, each birthing room and each employee present on any single shift;

(2) a reception and information counter or desk;

(3) a waiting area for visitors;

(4) convenient and accessible wheelchair storage;

(5) convenient and accessible drinking fountain or bottled water.

B. Administrative and work areas: The facility shall provide administration and work areas including:

(1) general or individual office(s) for business transactions, records, administrative and professional staff;

(2) storage for staff personal effects which can be locked in drawers or cabinets.

C. Toilets, lavatories and bathing facilities: All fixtures and plumbing in the facility shall be installed in compliance with applicable state and local building codes and shall include:

(1) a toilet and sink in each birth room, and a tub or shower available for use by the laboring mother within the facility;

(2) a separate toilet and sink for staff use;

(3) at least one public and visitor restroom conveniently located and accessible to the handicapped which includes a toilet and sink;

(4) a hand washing sink in all toilet rooms which shall be kept supplied with single use or individual use towels for hand drying or provided with mechanical blower;

(5) automatic hand sanitizer units may be used instead of a sink.

D. Nourishment station: A facility nourishment center shall be provided and include the following:

(1) work counter;

(2) sink;

(3) refrigerator;

(4) storage cabinets; and

(5) equipment for hot and cold nourishment; the nourishment area may be available for staff use, and may within space limited facilities also function as the staff lounge.

E. Examination rooms: If prenatal or other health care is provided at the facility, exam rooms shall be separated from the dedicated birth room(s) and shall have:

(1) sufficient size to accommodate the necessary equipment and personnel consistent with the purpose of the room;

(2) all walls in an exam room shall be a minimum of eight feet long; and

(3) a hand washing sink shall be located in each exam room or immediately adjacent to the exam room.

F. Birth rooms: The facility shall have one birth room available for each client in active labor which is and includes:

(1) sufficient size to accommodate necessary equipment and personnel consistent with the purpose of the room;

(2) all walls constructed to a minimum length of 10 feet long;

(3) birth rooms and bathrooms located to provide for complete privacy during use;

(4) clear floor space to permit unimpeded egress and access for emergency transportation equipment;

(5) located to provide unimpeded rapid access to a facility exit which accommodates emergency transportation vehicles and equipment; and

(6) furniture arrangement in the birth room that permits a minimum clear dimension of 36 inches on at least one side for the full length of the bed where birthing can occur.

G. Equipment and supplies:

(1) **Equipment:** The facility shall be equipped with all necessary items and equipment needed to provide low-risk maternity delivery and care, as well as all equipment available and ready to provide emergency medical services, including emergency carts or emergency trays, in life threatening events to mother and baby including, but not limited to,:

(a) cardiopulmonary resuscitation (CPR) equipment, oxygen, positive pressure mask, suction, intravenous (IV) equipment, equipment for maintaining infant temperature and ventilation, blood expanders, and medications identified in professional staff protocols to meet emergency needs of mother and baby at the facility and during transport to an acute care setting;

(b) equipment for performing standard screening, laboratory tests, and for sterilizing instruments and other materials, including programs for regular inspection and training in the use of resuscitation and other equipment as outlined in the policies and procedures manual which shall be available on site at all times; and

(c) maintenance of all equipment in accordance with manufacturer's specifications.
(2) **Supplies:** The facility's supply inventory shall be sufficient to care for the number of childbearing women and families registered for care at any one time.

H. Housekeeping and support areas: The facility shall provide housekeeping and support areas, including:

- (1) general storage facilities for supplies and equipment;
- (2) drug storage and administration areas which comply with New Mexico board of pharmacy regulations;
- (3) clean storage consisting of a separate room, space or closet for storing clean and sterile supplies;
- (4) soiled holding with separate collection, storage and disposal for all soiled materials used and stored at the facility.

I. Laundry services: The facility shall provide laundry services for both facility use and client care, on the premises or through laundry and linen services:

- (1) on-site laundry facilities shall be provided with necessary washing and drying equipment;
- (2) soiled laundry shall be kept in a separate storage area from the clean laundry storage area;
- (3) soiled laundry shall not be stored in the nourishment, kitchen or dining areas;
- (4) in facilities with four or more birthing rooms, washers shall be located in separate rooms from the dryers and shall have negative air pressure from the other rooms in the facility.

[8.370.17.37 NMAC - N, 7/1/2024]

8.370.17.38 MINIMUM SAFETY REQUIREMENTS: Each facility shall comply with the following minimum safety requirements:

A. Exits:

- (1) Each facility and each floor of the facility shall have exits as required and permitted by current fire protection and life safety codes adopted by the state.
- (2) Exit ways must be kept free from obstructions at all times.
- (3) All exit and exit access doors must be at least 36 inches wide and accommodate wheelchairs.

B. Corridors:

- (1) Minimum corridor width shall be three feet where the occupancy load is less than 50, or three feet eight inches, if the occupant load is greater than 50.
- (2) Narrower corridor widths may be allowed in staff areas not in the exit pathway if not in conflict with applicable building or fire codes and approved by the licensing authority prior to occupying the facility.

C. Doors and windows:

- (1) All doors in spaces occupied or used by clients shall be solid core and have a minimum width of 32 inches wide and be a minimum of one and three-quarter inches thick.
- (2) Each birthing room must have an operable window or alternate means to provide adequate ventilation and emergency egress.

D. Emergency lighting: The facility shall provide emergency lighting which:

- (1) activates automatically upon any disruption of electrical service;
- (2) is sufficient to illuminate paths of egress and exits in the facility; and
- (3) for facilities with four or more birth rooms, is located in each birth room.

[8.370.17.38 NMAC - N, 7/1/2024]

8.370.17.39 MINIMUM ENVIRONMENTAL REQUIREMENTS: Each facility shall comply with the following minimum environmental requirements:

A. Floors and walls: All finishes shall be kept clean and shall be of the type that is appropriate for the cleaning methods and solutions used to maintain a clean and safe environment.

- (1) Floor material shall be readily cleanable and wear resistant.

- (2) In all areas subject to wet cleaning, floor materials shall not be physically affected by liquid germicidal or cleaning solution.
- (3) Floors subject to traffic while wet including showers and bath areas shall have a slip resistant surface.
- (4) Wall finishes shall be washable and in the proximity of plumbing fixtures, shall be smooth and moisture resistant.
- (5) In areas subject to wet cleaning, the intersection of the floor and wall shall be sealed with a coved base or a wood bases tightly sealed connection without voids.
- (6) Floor and wall areas penetrated by pipes, ducts and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.
- (7) Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

B. Water: The facility shall provide water in sufficient quantity to support all services provided and shall:

- (1) insure that if the water is obtained from a private water system and not a publicly approved system, the water supply is inspected, tested and approved by the New Mexico environment department or appropriate authority prior to licensure; the facility shall be responsible for insuring that subsequent periodic testing and inspection of any private water systems is made at intervals prescribed by the New Mexico environment department or the legally responsible authority which oversees or inspects, tests, and approves the specific system;
- (2) provide hot water at each hot water outlet at all times with hot water for hand washing facilities, tubs and showers not exceeding 120 degrees Fahrenheit at the delivery point.

C. Water heaters:

- (1) Must be able to supply hot water to all hot water taps within the facility at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees Fahrenheit.
- (2) Must be enclosed and separated from other parts of the building premises by construction as required by applicable state and local building codes, if using fired fuel.
- (3) Must be equipped with an operable pressure relief valve (pop-off-valve) which is tested on a schedule recommended by the manufacturer.

D. Sewage and waste disposal: The facility shall provide for proper sewage and waste disposal at all times including:

- (1) If the facility sewage and liquid waste system is not part of an approved public system, the private sewage system must be inspected, tested and approved by the New Mexico environment department prior to licensure. The facility shall be responsible to insure that periodic testing or inspection of its private sewage disposal systems is made as required by the New Mexico environment department or the legally responsible authority which oversee or inspects the specific system.
- (2) If municipal or community garbage collection and disposal services are not available, the method of collection and disposal of the facility's solid waste must be inspected and approved by the New Mexico environment department or the legally responsible authority which oversee or inspects the specific system.
- (3) All external garbage and refuse receptacles must be kept clean, durable, have tight fitting lids, must be insect, rodent and animal proof, washable, leak proof, and constructed of materials which will not absorb liquids.

E. Environmental services: The facility shall provide:

- (1) A separate lockable storage area or closet for environmental cleaning supplies.
- (2) Proper disposal of all liquids and waste resulting from cleaning contaminated areas.
- (3) Proper procedures shall be maintained, and techniques used, consistent with the facility's policies and procedures and applicable regulations for disposal of bio-waste and sanitary disposal of all other wastes.

F. Cleaning:

- (1) The facility must be kept clean and free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.
- (2) Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.
- (3) Safe and effective procedures for cleaning and sanitizing all facility areas and equipment shall be followed consistently to safeguard the health of the clients, staff, and visitors.

[8.370.17.39 NMAC - N, 7/1/2024]

8.370.17.40 MINIMUM LIGHTING AND ELECTRICAL STANDARDS:

A. Electrical standards: The facility shall provide that:

- (1) all facility electrical sources, supplies, and equipment comply with all applicable national, state and local electrical codes;
- (2) all circuit breakers or fused switches provide electrical disconnection and over current protection and are:
 - (a) readily accessible for use and maintenance;
 - (b) set apart from traffic lanes; and
 - (c) located in a dry, ventilated space.
- (3) all panel boards servicing lighting and appliance circuits shall be on the same floor and in the same facility area as the circuits they serve; and
- (4) each panel board shall be marked showing the service area of each circuit breaker or fused switch.

B. Lighting: The facility shall insure that:

- (1) all spaces occupied by people, machinery or equipment within buildings, at outside building approaches and at parking areas have adequate lighting to prevent injury;
- (2) lighting shall be sufficient to make all parts of an area clearly visible;
- (3) lighting fixtures shall be shielded as required by code;
- (4) lighting fixtures shall be selected and located for the comfort and convenience of the clients, staff and public; and
- (5) a fixed or portable examination light shall be provided for all examination and birth rooms.

C. Electrical cords and electrical receptacles: Power strips may not be used as a substitute for adequate electrical outlets in a facility. Power strips may be used for a computer, monitor and printer. Power strips shall not be used with medical devices. The facility shall take precautions if power strips are used, including: installing internal ground fault and over-current protection devices, preventing cords from becoming tripping hazards, and using power strips that are adequate for the number and types of devices used. The facility shall take all necessary precautions to insure power overloads and excessive power demands on any circuit do not cause overheating or fire. Ground fault circuit interrupter (GFCI) shall be installed in locations near water sources to prevent electrocution of persons.

- (1) All electrical cords and extension cords must be:
 - (a) U/L approved;
 - (b) replaced as soon as they show wear;
 - (c) not used under any circumstances as a general wiring method;
 - (d) plugged into an electrical receptacle within the room where used and not be connected in one room and extended to anything outside the room; and
 - (e) not be used in series.
- (2) Electrical receptacles must be:
 - (a) installed as required by applicable codes;
 - (b) appropriately rated for each use and function; and
 - (c) any use of wall mounted outlets to expand the receptacle capacity or to be used as a surge protector and connected to any medical equipment is prohibited.

[8.370.17.40 NMAC - N, 7/1/2024]

8.370.17.41 MINIMUM HEATING, VENTILATION AND AIR CONDITIONING STANDARDS: The facility shall provide and maintain heating, ventilating and air conditioning or air cooling systems sufficient to keep all facility occupants comfortable which include but are not limited to:

A. Heating, air-conditioning or air cooling, piping, boilers and ventilation equipment furnished, installed and maintained to meet all requirements of applicable state and local mechanical, electrical and construction codes.

B. Use of a heating method that consistently provides a minimum indoor winter design capacity of 75 degrees fahrenheit with accessible temperature adjustment controls appropriate for all occupants' comfort.

C. A prohibition against the use of unvented heaters, open flame heaters or portable heaters.

D. An ample supply of outside air shall be provided in all spaces where fuel fired boilers, furnaces or heaters are located to assure proper combustion.

E. All fuel fired boilers, furnaces or heaters shall be connected to an approved venting system which takes all combustion products directly to the outside air.

- F. Adequate ventilation at all times to provide fresh air and the control of unpleasant odors inside the facility.
 - G. A one hundred percent automatic cutoff control valve in event of pilot failure for all gas-fired heating equipment.
 - H. A system for maintaining all occupants' comfort during periods of hot weather.
 - I. Protection of all boiler, furnace or heater rooms from other parts of the building by construction having a fire resistance rating of not less than one hour with doors that open to the interior being self-closing with a three-quarter hour fire resistance rating.
 - J. Filters having efficiencies as required by state codes for all central ventilation and air conditioning systems.
- [8.370.17.41 NMAC - N, 7/1/2024]

8.370.17.42 FIRE SAFETY: All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility including, but not limited to:

- A. **Fire clearance and inspections:** Each facility must request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the freestanding birth center, the facility must document the date the request was made and to whom. If the fire authorities make annual inspections, a copy of the latest inspection must be kept on file in the facility.
 - B. **Staff fire safety training:**
 - (1) All facility staff must know the location of and be instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility shall request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.
 - (2) Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways and any other condition which could cause burns, fall, or other personal injury.
 - (3) Fire and evacuation drills: The facility must conduct at a minimum on a quarterly basis at least one fire drill and evacuation drill. A log must be maintained by the facility showing the date, time, number of staff participating and outlining any problems noted in the conduct of the drill.
 - C. **Evacuation plan and preparedness plans:** Each facility must have a fire and disaster evacuation plan conspicuously posted in each separate area of the building showing routes of evacuation in case of fire or disaster or other emergency, as well as a disaster preparedness plan in the event of man-made or natural disaster.
 - D. **Provisions for emergency calls:** An easily accessible hard wired telephone for summoning help, in case of emergency, must be available in the facility and a list of emergency numbers, including, but not limited to, fire department, police department, ambulance services and poison control center must be prominently posted by the telephone(s).
 - E. **Fire extinguishers:**
 - (1) fire extinguishers as approved by the state fire marshal or fire prevention authority having jurisdiction must be located in the freestanding birth center;
 - (2) fire extinguishers must be properly maintained as recommended by the manufacturer, state fire marshal or fire authority having jurisdiction; and
 - (3) all fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal or fire authority having jurisdiction; all fire extinguishers must be tagged, noting the date of inspection.
 - F. **Alarm system:** A manually operated, electrically supervised fire alarm system shall be installed in each facility as required by applicable national fire protection association (life safety code) 101 (NFPA 101). Facilities located in multi-story buildings must have a fire alarm system as required by NFPA 101.
 - G. **Fire detection system:** The facility must be equipped with smoke detectors as required by the NFPA 101 (life safety code) and approved as to number, type and placement in writing by the fire authority having jurisdiction.
- [8.370.17.42 NMAC - N, 7/1/2024]

8.370.17.43 INCORPORATED AND RELATED STATUTES, RULES AND CODES: The facilities that are subject to this rule are also subject to other statutes, rules, codes and standards that may, from time to time, be amended, including all authorizing statutes under which any applicable regulations have been promulgated. Applicable regulations include, but are not limited to the following:

- A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
 - B. Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.
 - C. Adjudicatory hearings for licensed facilities, New Mexico health care authority, 8.370.2 NMAC.
 - D. Caregiver's criminal history screening requirements, 8.370.5 NMAC.
 - E. Employee abuse registry, 8.370.8 NMAC.
 - F. Incident reporting, intake processing and training requirements, 8.370.9 NMAC.
- [8.370.17.43 NMAC - N, 7/1/2024]

8.370.17.44 SEVERABILITY: If any section or provision or application of these regulations is held to be invalid, the remainder and its application to other situations or persons shall not be affected or interfere with the remaining requirements provided by these regulations.

[8.370.17.44 NMAC - N, 7/1/2024]

HISTORY OF 8.370.17 NMAC: [RESERVED]