**9-1-1 ARM/Rule Making Subcommittee Meeting**

**Tuesday, Sept. 21, 2017**

**Minutes**

**Present:**

Adriene Beck, Missoula Co.

Liz Brooks, Flathead Co.

Kimberly Burdick, Chouteau Co.

Geoff Feiss, MTA, Chair

Steve Haddon, Jefferson Co.

Don Harris, SITSD

Quinn Ness, PSCB

Bill Nyby, Sheridan Co. ☎

Wing Spooner, PSCB

Jennie Stapp, MSL

Rhonda Sullivan, PSCB

**Absent:**

Denis Pitman, Yellowstone Co.

**Call to Order:** Quinn Ness called the meeting to order because Geoff Feiss was delayed.

**Introductions and Welcome**: Members introduced themselves.

**Minutes**: Quinn reported that the subcommittee does indeed have to follow Montana’s open meeting laws. Hence, minutes from the last meeting need to be approved and time needs to be allowed for public comments at the end of the meeting. Two spelling changes of names were needed.

Motion: Steve Haddon moved to approve the minutes as corrected. Adriene Beck seconded. The motion carried.

**HB 61**: Quinn Ness explained that the subcommittee is adopting rules for two programs: the 75% allocation of funds to PSAPs and the new 9-1-1 grant program where local governments and private telecommunications providers can apply for grant funds.

The 75% allocation program administrative rules must be in place by July 1, 2018, so the subcommittee will be starting with the rules for the quarterly distribution of funds to local governments. The Bureau is looking for clarification in state statute on some issues that have not been clear in the past.

**Definitions:**

“**Local Government**” according to MCA 7-11-1002 means “a city, town, county, or consolidated city-county government or any combination of these acting jointly.” The definition does not specify that the entity be incorporated.

* **Action Item:** Don Harris will research this issue.

How does the Department verify that the entity receiving 9-1-1 funds is a local government?

* Should the rules say that the entity should be an incorporated area?
* Members discussed the MCA definition of a “Special District,” which is a unit of local government that is authorized by law to perform a single function or a limited number of functions, but the term excludes rural fire districts, which are autonomous.
* Special districts also include “any district or other entity formed to perform a single or limited number of functions by interlocal agreement.”
* Many PSAPs have 9-1-1 Boards. Can they legally be considered a local government entity?
	+ Department wants to identify the legal entity it is sending the money to and who will be held responsible for the money. Historically, it has been the county or city/town.
	+ The revenue account may be under the governance of a 9-1-1 board, but the board is not the legal entity that receives or is ultimately responsible for the expenditure of the funds.
	+ If a jurisdiction became a special district and can set its own mill values, could it be considered a local government?

Members discussed examples of entities that have interlocal agreements or MOUs in place, such as the Flathead County 9-1-1 Center and the Jefferson County Sheriff’s Office’s MOU with the Boulder Police Department for dispatching services.

* A key question is “Are they authorized to receive and expend funds and to enter into legal agreements?”
* Informal agreements at the local level do not necessarily carry the same weight as Interlocal Agreements. However, interlocal agreements can take many forms.
* Historically, the State 9-1-1 Program has not provided legal advice to counties or cities and towns regarding interlocal agreements. However, should some minimum standards be included in the rules? The 9-1-1 Program is often asked for examples of agreements or templates. Since MACO provides legal services for counties, perhaps it could develop a template?
* The state does not want to dictate the content of interlocal agreements, but the goal is to capture everything that should be addressed by a local agreement, so there are no misunderstandings on where funds should go or be managed.
* MCA 7-11-105, the statute on Interlocal Agreements has 10 subsections, with the last one indicating that the content of the interlocal agreement can include whatever they think is necessary, i.e. “any other necessary and proper matters.”
* The department does not want rules that are cumbersome or a strain on local resources. It just wants to be sure that its fiduciary responsibilities are met. Whatever the solution, it should be simple, efficient and its implementation should minimize impact.
* Jennie explained the process that the Montana State Library used to certify public libraries. Libraries were asked to certify how they were formed; so, they provided documentation of their interlocal agreements or other certification information.
	+ The 9-1-1 statute does not include the wording “certify”, but a certification process could be provided for in rule. A local government would have to provide documentation to the Department, which could consist of an action by their city council or county commissioners and/or a copy of their interlocal agreement, referencing the code.
	+ In addition, the local government would need to confirm that it hosts a PSAP that is operated on a 24-hour basis that has certain telecommunication lines coming into it. It will need to verify that the emergency communications are routed to that PSAP *first* to establish the fact that it is a”primary” PSAP.
	+ There are some counties that then sub-distribute 9-1-1 funds to cities and towns for “secondary” PSAPs within the county. Some agreements might also be needed to sub-distribute 9-1-1 funds to a tribal government.
	+ The Department could then certify that they are an eligible recipient of 9-1-1 funds for a period of time, say five years. If no changes, then they could renew certification for another five years.
* The Department has expenditure monitoring requirements in statute. Annual monitoring process is not a “financial audit”. Monitoring is reviewing expenditures through sampling and identifying if funds were expended for an allowable use. Monitoring may require a site visit. Due to budget restrictions, site visits are only done on a case-by-case basis, if required. PSAPs currently complete an online financial survey. Some expenses may be questioned and, very infrequently, expenditures may be reversed or paid back. Sometimes the Department has difficulty obtaining reports. It has the authority to withhold funds from a local government if they are expending funds for unallowable uses or if documentation is not provided.
* There is a reporting requirement in House Bill 61.

**“Eligible Recipient” (HB 61, Section 7):** Language struck from the prior 9-1-1 bill was the term “9-1-1 jurisdiction,” because it is not a legal entity. For example, the Central Montana Dispatch Center is not a legal entity. The legal entity is the City of Lewistown, which is the local government entity that receives 9-1-1 money for Fergus, Petroleum and Judith Basin Counties and for all of the incorporated cities and towns in those counties. Hypothetically, the Town of Stanford could have a secondary PSAP, so the City of Lewistown could agree to provide a certain amount of funding to the Town per quarter. When the Department requests annual accounting reports, it would go to the first recipient, the City of Lewistown for the reports, not to the Town of Stanford that is the sub-recipient.

* The Department’s legal relationship is with the “certified” local government entity and the first recipient of the funding, not the other local government entities (potential sub-recipients) that have entered into an interlocal agreement with the certified entity.
* The rules should clarify if and how funds are to be re-distributed from the initial recipient and any sub-recipients.
* Many agreements in place now at the local level are not formal interlocal agreements. The Department does not want not to dictate the content of local agreements. But, it will need copies of those agreements.
* Effort will be needed to notify local governments and PSAPs about certification and interlocal agreement requirements.
* The U.S. Census Bureau provides population data for incorporated cities and towns. It should be clarified in rule that the definition is based on incorporated cities and towns not “Census Designated Places.”
* Several legislators wanted to provide incentives for local governments to work together. So, for example, a new technical or qualification standard could be set, but an incentive could also be created if the standards were met. The Statewide Plan/GIS subcommittee is looking at virtual consolidation.

HB 61 reflects two processes: first, who is eligible for funding and, second, how funds are to be allocated.

**Review**: A local government entity definition can be included in the rules as an incorporated city, town or county or any consolidated city-county government or an entity created through an interlocal agreement (Liz Brooks’ organization could be used as a model). The first recipient of funds has to be a local government entity as defined in statute.

The subcommittee will need to consider how to address a consolidation that dissolves. This could be covered in the certification process, which would be an open cycle, meaning that an eligible local government could apply for certification at any time. Jennie gave an example of the Whitefish Community Library that withdrew from the Flathead County Library system. It is now independent, but it still has to certify that it meets public library requirements.

**Host PSAP:** The HB 61 definition is at bottom of page 14. A "‘Public safety answering point’ means a communications facility operated on 24-hour basis that first receives emergency communications from persons requesting emergency services and that may, as appropriate, directly dispatch emergency services or transfer or relay emergency communications to appropriate public safety agencies.”

* Are additional standards needed for a PSAP to be considered primary?
* In a certification process, what documentation is needed?
* Minimum standards for NG 9-1-1 should be set according to NENA. The goal is to have all calls to be routed the same way. This standardization doesn’t exist today.
* Example: Lincoln County receives funds for its primary PSAP located in Libby as well as its two secondary PSAPs in Troy and Eureka. Lincoln County receives all the funds and re-distributes them to Troy and Eureka. The process should be transparent.
* In a legacy telephone environment, should the 9-1-1 Program require documentation that the emergency voice communications are being routed first to that PSAP? Would confirmation come from the telecommunications company? What would be the standard? In the past, the 9-1-1 Program has relied on information from the telecommunications company.
* There may be cases where a secondary PSAP receives some form of emergency communications prior to the primary PSAP, such as a text message. Routing of text messages can be different than routing of voice calls.
* We need to draft a rule that clarifies that the primary PSAP is where all (wireline and wireless) of the voice calls are **first** delivered. HB61 did specifically replace language related to “9-1-1 calls” with the term, “emergency communications.” Perhaps the primary PSAP can be defined as the one that receives all (wireline and wireless) of the voice calls and the majority of all emergency communications (voice & data). Rules should clarify the intent of the legislation.
* Does the 9-1-1 Program require that network providers confirm where calls are routed or from which cell site sector they come from? With NG 9-1-1, call information will come with a latitude and longitude data.
* Should local governments provide documentation about their emergency routing numbers from the telecommunications company? This documentation could simply be a letter from the telecommunications company saying that all calls in this particular geographical area are routed to this particular PSAP.
* The legislative intent is not to fully fund a PSAP. Local governments typically have to contribute additional funding to host and operate a PSAP.

HB61 language that encourages incentives for cooperation among local governments and PSAPs is not intended to be a disincentive or punishment. Do no harm to current PSAPs. This is a very contentious subject, which is why it is a phased adoption that is pushed out to 2022; so, the subcommittee doesn’t need to focus on it now. The subcommittee does need to be cognizant so as not to adopt rules that will make it difficult for future consolidation.

**Section 7. Distribution of 9-1-1 systems account by department**:

Section 7 (a) reads: “each local government entity that hosts a PSAP must receive an allocation equal in proportion to the quarterly share received by the local government entity that hosts the public safety answering point during the 2017 fiscal year.” Historically, the 9-1-1 Program performed an allocation process for every city, town and county and then “roll-up” the allocations to the end recipient level. (Ex. Troy, Eureka and Libby each have an allocation along with Lincoln County (remaining balance). The intent of HB61 was to continue with the existing process, but to simplify it.

* The phrase, “in proportion to,” corresponds to a percentage. Program staff will do an analysis for every quarter in SFY2017 and then calculate the average of all four quarters, which will result in a consistent allocation percentage. We want the process to be as simple as possible and transparent. Program staff will provide the subcommittee with the analysis and a recommendation.
* The current allocation process is too complex, so it is difficult to understand how the allocation is processed. Currently there are allocations for basic 9-1-1, enhanced 9-1-1 and wireless enhanced 9-1-1. At the next meeting, examples will be provided to help subcommittee members understand the current process.
* The revised allocation process should be straightforward, and based on a proportion methodology so it is transparent. It should be simple and easily understood. PSAPs will ask how and why we got to the new allocation amounts, and it should be easy to explain.
* PSAPs that work with tribal governments will need to be contacted because HB61 does not allow direct distribution to them. Example: A portion of Glacier County is made up of the Blackfeet Reservation. Potentially the county will need an agreement with the tribe as a sub-recipient. A tribe that overlaps with several counties, will need to have multiple agreements.
* How do we ensure that it is an amount “equal in proportion?” It can be a percentage. The “proportion” is based on population. The percentage of the allocation will be static, but the dollar amount won’t be. In general, the funds are allocated on a per capita basis.
* Section 7. Subsection (b) states that the allocation may vary from the 2017 fiscal year snapshot based on the amount of revenue collected.

**Certification Process**

We will need a new process to certify the local government entities that first receive the quarterly distributions and it can be simple and straightforward. The sooner these rules are adopted, the sooner PSAPs can start gathering the information they need to submit. So, one rule could say: “By July 1, 2018, the local government entities shall provide the documentation/information to the department.”

* The department will need an internal process to provide certification. It can be a small committee, say four people. Program staff would assist local entities. A letter would be provided to the local government granting certification (term length: five years – maximum would be seven years). Local government can apply at any time to be certified.
* Once a certification by the department is given, it constitutes a legal agreement between the department and the local government agency. Then the department’s obligation is to disburse the funds.
* The MSL process is an annual process. Public libraries certify that they meet certain standards. This shields the state from some legal liability. MSL has standards and if they don’t meet them, then funds can be withheld.
* By receiving the allocation, the local government entity will comply with what the money is required to be spent on. It is an implied contract.
* It would be good to get all the certification documentation identified and publicized ahead of time to ensure continuity. Notify PSAPs and provide some sort of public notifications that any local governmental entity can apply. So, for example, interlocal agreements may need to be drawn up.
* Would the 9-1-1 Program notify current recipients? It can contact the PSAP Managers.
* Would an MOU be acceptable? The department will not dictate the terms and conditions of the document; however, the standard is an interlocal agreement. The State shouldn’t be policing the interlocal agreements. The application process should include providing a copy of the interlocal agreement. It is important to request and receive documentation.
* Signatures should be from authorized local government officials only.
* Historically, PSAPs had to file comprehensive 9-1-1 plans. These have not been updated, so we might want to consider a planning document requirement?

Based on the discussion, Don Harris will start drafting rules and distribute draft rules to subcommittee.

**Meeting Schedule**: Members reviewed the meeting schedule and indicated conflicts with the October 5, 2017 meeting. The October 5, 2017 meeting will be cancelled. Staff will send out the cancellation.

**Public Comment**: None

**Adjournment:** Adriene moved to adjourn. Steve seconded. The motion carried.

**Next meeting**: The October 5 meeting will be cancelled due to scheduling conflicts. The next meeting will be October 18, 2017.