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

**Friday, Nov. 2, 2017**

**Minutes**

**Present**

Geoff Feiss, MTA, Chair

Liz Brooks, Flathead Co. ☎

Denis Pitman, Yellowstone Co. ☎

Adriane Beck, Missoula Co. ☎

Bill Nyby, Sheridan Co. ☎

Sandra Barrows, Barrows Consulting ☎

Don Harris, DOA Attorney

Steve Hadden, Jefferson Co.

Wing Spooner, Public Safety Communications Bureau (PSCB)

Rhonda Sullivan, PSCB

**Absent:**

Quinn Ness, PSCB Jennie Stapp. Montana State Library

**Minutes:** Geoff deferred approval of the minutes until the next meeting so that everyone would have time to read them.

**Schedule of Funding Allocations**

Staff sent out a HB61 Funding Allocation Analysis spreadsheet that lists the county 9-1-1 distributions for 2017. The distribution ensures that each PSAP receives 1% of the funds or more based on the 84%-16% rule. For example, Deer Lodge County received $102,188 in FY17, which represents 1% of the overall funds that same in. The highlighted jurisdictions are those who will be receiving a portion of funds that previously were sent directly to the tribes. For example, Chouteau County’s portion will increase by .23%, which represents the additional funds that will come from the Rocky Boy’s allocation. The counties will have to move forward with the tribes on agreements for how they will receive their funding.

Currently, only three tribes receive direct funding because there are only three tribal PSAPs today. The tribes will go down to zero distribution. Rocky Boy currently receives funding, and their funds will be split percentage wise between Hill and Chouteau County. Pondera County will be receiving a percent of the Blackfeet Tribe’s current allocation. The 2017 percentage allocations on the spreadsheet will be in effect until 2022.

HB 575 Cost Recovery payments came from a bill passed in 2013 which allowed telecommunications companies to apply for cost recovery. The old statute was very strict about distributing money from that fund, so it built up to about $11 million. HB 575 provided PSAPs with an extra payment from that fund. This will go away with HB 61. This money was not included in the totals on the spreadsheet.

**Review of Allowable Expenses**

Rhonda reviewed the list of allowable expenses, which she consolidated and simplified. Some items are pro-rated, and some are not. Geoff notes that under the title of Facilities (utilities, insurance and rent), those items should be pro-rated. **Task Item: Rhonda will review the list to see if there are any other cases where pro-rating should be added.**

Don Harris noted that the spreadsheet was more comprehensive than the draft rule outline. He recommended including this spreadsheet in the actual draft rules. Listing the items under cost types and cost category makes it easier to review. Everyone was urged to review the list.

Steve Hadden weighed in on personnel costs, specifically “pre-employment costs” and “Costs associated with the recruitment, hiring and screening of new hire candidates, including physicals and other required tests.” Should these be included? Should we clarify that these expenses are directly associated with operating a 9-1-1 center. Perhaps the wording “for personnel directly associated with operating a 9-1-1 center” could be added.

Kimberly asked for clarification on what is meant by “contracted services,” and the costs that includes “fees paid to another PSAP for the handling of 9-1-1 calls.” This language came from current allowable uses. The meaning was interpreted as if one PSAP wanted to pay another county to be its back-up. This could be clarified in the spreadsheet. Perhaps a list of what they can contract for, such as CJIN services, could be created. Currently, a lot of money is spent on contractors to write policies and rules.

The main consideration with being too specific is the possibility of accidently excluding something that would be an appropriate expense. If additional clarification is needed, the PSAP can contact the 9-1-1 Program Office.

Pre-employment costs will remain eligible. An argument can be made that it is within the spirit and scope of the overall legislation to fund the operations of a PSAP. Finding qualified dispatchers is very difficult. There are costs associated with having prospective employees getting physicals and being tested. It was suggested that “9-1-1” be added in front of the word “candidate.” Rhonda endorsed this idea. **Task Item: Add a preamble.**

**NEW RULE I - DEFINITIONS**

No changes.

**NEW RULE II CERTIFICATION REQUIREMENTS**

“(1) A local government entity that hosts a PSAP must be a certified PSAP in order to receive payments as provided in [HB 61 § 7].”

Geoff thought this language seems a little circular and questioned whether the line was even needed.

We are certifying a PSAP, not a local government entity. Don said the language was trying to tell local governments that their PSAPs have to be certified. It was suggested that the sentence be re-phrased to: “A local government entity must host a certified PSAP in order to receive payments as provided in [HB 61 § 7].” This would then be followed by language that describes how they become a certified PSAP.

 (b) operates a 9-1-1 system that at a minimum meets the requirements for a 9-1-1 system as provided in 10-4-103 MCA (*See: HB61 Section 17*); and

 (c) first receives all emergency wireline and wireless voice calls from persons requesting emergency services in the PSAPs service area.

Bill Nyby asked for clarification of the term “private” public safety agencies (located on page 15 of HB 61 Section 17 as follows: (1) Every public and **private** safety agency in this state may establish or participate in a 9-1-1 system.) The term “private public safety agencies” refers to those agencies that can be dispatched by a PSAP, such as ambulances or fire services. So, “private” refers to agencies that participate in the 9-1-1 system, not the PSAP. Page 14 gives a definition of “Private Safety Agency,” which means an entity except a public safety agency, providing fire, ambulance or medical services.” A private safety agency is a service provider. A public safety agency is a dispatcher or service provider.

Everyone is comfortable with the revisions presented in (b) and (c) above.

**NEW RULE III APPLICATION FOR CERTIFICATION**

In this section, the words “9-1-1 System” were substituted for “emergency communications.”

(1) An applicant for certification must submit an application on a form prescribed by the department.

(2) The application must be complete and must include the following:

 (a) a declaration, signed by an official who is authorized to act on behalf of the local government entity that has submitted an application for certification, that the applicant:

 (i) is authorized to establish and operate a 9-1-1 system;

 (ii) is eligible to become a certified PSAP pursuant to NEW RULE II;

 (iii) first receives all emergency wireline and wireless voice calls from persons requesting emergency services in the PSAPs service area.

The intent of this revision was to no longer have local governments provide documentation verifying their eligibility. Instead, the local government can simply make a declaration.

The term, “authorized official” is defined in the statute for local governments.

(4) If a tribal government is participating in a 9-1-1 system and PSAP with a local government entity that hosts a PSAP and the tribal government will receive distributions from payments made pursuant to [HB 61 § 7]:

 (a) the local government entity that hosts a PSAP must have an agreement with the tribal government that describes and defines the terms of the parties' participation in the 9-1-1 system and PSAP; and

 (b) the declaration required in (2)(a) must be signed by an official who is authorized to act on behalf of the tribal government.

Initially, (b) was thought to be redundant, but it was clarified that the official who signs must be authorized to act on behalf of the tribal government. So, no change is needed.

(5) The applicant must be prepared to provide verification of statements made in its application and declaration upon request by the department.

 (6) In order to receive payments as provided in [HB 61 § 7] in state fiscal year 2019, a local government entity that hosts a PSAP must apply for certification on or before May 1, 2018. In order to receive payments as provided in [HB 61 § 7] in subsequent fiscal years, a local government entity that hosts a PSAP must apply for certification annually on or before April 1.

The date of May 1, 2018 was proposed to allow staff time to process applications ahead of the June 30 end of the fiscal year and ahead of the July 1 beginning of the next fiscal year. In future years, the date of April 1 was proposed. The May 1 date would allow PSAPs additional time to obtain signed contractual agreement with tribes. Interlocal agreements include a definition for public agencies, which does not include tribal governments.

Members discussed whether the recertification should be annual or bi-annual. Since the pieces to operating the system are static, a two-year re-certification process seems to be more reasonable. Since the systems do not change much, perhaps every two years would be too short of a cycle. The group decided to use bi-annual, recognizing that this is just a draft proposal that will be going to the 9-1-1 Advisory Council and public comments before adoption.

A question was posed about whether all PSAPs being on the same schedule will be too onerous for the 9-1-1 program staff. Rhonda explained that if changes are needed, she has to allow the IT department adequate time to change the program that runs distributions. She indicated that more help may be on board to assist with implementation by the time this goes into effect.

Bill asked for clarification on the agreement with tribal government. A Memorandum of Understanding is what would be expected.

**NEW RULE IV CERTIFICATION PROCESS**

Members discussed the 90-day limit from the date of non-approval to correct deficiencies and demonstrate compliance. An additional 90 days may be requested to correct deficiencies or demonstrate compliance. It was clarified that this limit applies if the PSAP’s certification is being contested. A 90-day period covers three board or commissioner meetings, so several members expressed the viewpoint that 90 days was not too long.

Don Harris was concerned that if the entire 180 days was used to correct deficiencies, it could delay funds to the PSAP for up to 6 months. Rhonda said she can hold money in the separate account that can be released as soon as any issues are cleared up. The money doesn’t have to be held until the next payment cycle. It would be an incentive for the PSAP to resolve issues if the money is being withheld. Members discussed whether it needs to be specified that funds will be withheld, and reasoned that since PSAPs won’t receive funds until they are certified, a rule is not needed.

**NEW RULE V DECERTIFICATION AND REDUCTION OF FUNDING**

(1) The department may determine a certified PSAP is not in compliance with PSAP certification requirements if a certified PSAP:

(a) is not in compliance with any of the requirements of Title 10, chapter 4, MCA, or the administrative rules adopted thereunder;

 (b) uses or distributes funds for any purpose other than those identified in New Rule VI;

 (c) does not timely comply with department requirements; or

 (d) has not timely provided information requested by the department.

(2) If the department determines a certified PSAP is not in compliance with a PSAP certification requirement, the department shall send the certified PSAP a deficiency letter identifying the PSAP certification requirement that is not met, and the action needed to correct the deficiency. The certified PSAP shall have 30 days from the date of the deficiency letter to correct all deficiencies and demonstrate compliance.

Everyone said that the 30-day limit to correct deficiencies and demonstrate compliance was an appropriate amount of time.

Members discussed the pros and cons of adding an Item (9) to tell PSAPs that they can reapply for certification after a certain amount of time once they are decertified. If a PSAP were decertified and allowed to re-certify, would this fall under interim certification or would a different timeline be implemented? Don didn’t put an interim time period for de-certification because he was trying to stick to what he saw in the statute. He was concerned about possibly overstepping authority.

Steve asked Don for clarification on if there is an avenue in district court available if the applicant is not happy with the decision made by the Director. Yes, it is in statute that judicial review is the next step. Since that is in statute, the information does not need to be addressed it these rules.

**NEW RULE VI ALLOCATION OF FUNDS**

Everyone was comfortable with the wording in this section. Bill’s biggest concern is that smaller PSAPs receive a fair share so they can properly operate, and he is happy with the allocation spreadsheet that Rhonda provided.

**NEW RULE VII ALLOWABLE USES OF FUNDS**

The information in the spreadsheet will replace the information listed in the draft rules. It is important to only have one reference point to look at. The intent is not to have two different sources of information.

Geoff encouraged everyone to thoroughly review the table. **Assignment Task Item: Everyone is to examine the spreadsheet to ensure proper wording and to ensure that it includes what is needed to be included.**

On Oct 18, Geoff sent an email summarizing key tasks, the majority of which have been resolved.

Rhonda has proposed revisions/amendments in expenditures to account for GIS related allowable expenses. Jennie has some amendments to that provision. Geoff urged everyone to look at these and provide feedback.

Monitoring expenditure of spending – Staff was asked to develop proposed rules for today’s meeting which would provide clear guidance to PSAPs that any and all funds from the state are clearly to be used for purpose of 9-1-1. Don and Rhonda indicated that staff has not yet discussed what the monitoring rule should look like. The subcommittee actually hasn’t drafted rules on this item yet either.

**NEW RULE VIII MONITORING EXPENDITURE OF FUNDING**

Subcommittee members reviewed the 9-1-1 ARM Draft Outline document. Discussion was opened on what the group thinks rules for monitoring expenditure of funding should be. Perhaps the rule should just be general, saying in effect that the department is authorized to monitor expenditures and that certified PSAPs are required to comply with requests for certification documentation.

Rhonda was asked to describe what she currently does for monitoring. She annually sends out requests for the jurisdiction’s detailed ledger queries of 9-1-1 expenditures and any information required if they used the funds for documents employee salaries or insurance. She requests names of those employees, too. PSAPs also have input an annual expenditure report online through ePass. They provide an overall view of what they have spent. This is done annually as well. If additional clarification needed, she will request copies of invoices. She has to ask some local government’s financial people for information repeatedly. The last straw is to threaten to withhold their funds, at which point she notifies the PSAP. It would be useful for PSAPs to have a list of expected documentation. **Task Item: Rhonda will work with Don to put this list together.** Failure to provide the documentation is cause for de-certification.

Bill inquired as to its county’s use of the Black Mountain system for accounting, which can run a detailed query for each account. When asked if this is what Rhonda would be looking for when she asks for an annual reporting, Rhonda replied that it is one of the acceptable financial systems. If verification of something is needed, they can pull the claim/invoice and send a copy to Rhonda. Local governments also send a report to her that verifies how much money they have received from the state annually. Local governments must have a separate account to hold 9-1-1 funds. This may already in statute: Section (6) of HB 61. **Task Item: Research is needed on this question.**

Monica Ness used to do all the monitoring. Since she retired, Rhonda has been monitoring one-third of the PSAPs unless a concern has been raised. She performs risk-based monitoring. If a deficiency is discovered, is there a statute of limitations to seek re-payment? Rhonda is not aware of one. Members discussed whether this issue should be addressed, what is the look-back period should be, and how long accurate records should be maintained. From a taxpayer’s perspective, what would be a reasonable amount of reach-back time? As a PSAP, after a certain point it becomes unreasonable. Geoff is on national board, which can go back and audit 4-5 years. The 9-1-1 Program just went through a legislative audit that went back two years. In practice, how long are PSAPs keeping these kinds of records? Perhaps 5 years. Maybe the term “reasonable” should just be used. Would the expectation be that the 9-1-1 Program could request re-payment within that same time frame? Yes. That could be a penalty. **Task Item: Ask the legislative audit division for a reasonable period for accountability.**

None of these time limits would be used in a criminal situation. Steve Hadden clarified legal aspects of statutes of limitation, which is a whole different scenario for criminal cases.

Where is the shared liability if a PSAP has been providing it annual documentation, but has not been getting audited? If a deficiency is discovered, can the 9-1-1 program go back five years and request re-payment? There is statute of limitation for civil actions, so the reach-back period would be controlled by an applicable statute of limitations.

Bill asked his finance director how long they have to retain financial records, and she said some are permanent, but most records have to be retained for seven years after an audit.

The next meeting is on Nov. 16 and the goal will be to wrap up new rules pertaining to monitoring, suspension of funding and reporting requirements (Section 6, 7 & 8). Staff will put together rules for the subcommittee’s consideration on Nov. 16 about monitoring and reporting requirements. Also, an outline will be prepared for Nov. 16 of rules related to competitive grants (Section 8).

**Task Item: Don will build an outline of rules we need to develop**.

**Task Item: Geoff will put out an e-mail list of to-do items.**

The upcoming meeting schedule was reviewed.

Members discussed which draft rules could be passed along to the 9-1-1 Advisory Council would have to provide them with a draft subject to changes that come out of Nov. transmittal to the council.

Finish section 7 on Nov. 16 and will also provide a briefing to the council on the same day. It’s too soon for the Council to act, but they could at least be briefed.

Don pointed out that if the Certification portion of the rules is not submitted to the Advisory Council for its Nov. meeting, we won’t have them in place until February at the earliest, leaving very little time for the next steps, including the DOA rule review, sending it to the Sec. of State, and putting it out for public comment. could have rules adopted by February 2018, which would give PSAPs three months to get their materials together by the May 1 deadline.

So, Don believes that the subcommittee should have a draft ready for the Advisory Council to review either today or by Nov. 16. The rest of Section 7 can wait. Monitoring section isn’t as urgent as the Certification part. There is not a problem with partially implementing Section 7 and fully implementing the rest of the law at a later time. Don did not see any statutory conflict with a phase-in rule adoption approach. His only concern is getting everything in place before the July 1, 2018 deadline. The priority is that PSAPs know what is needed to become certified and to continue receiving funds.

On Nov. 16, the subcommittee will approve rules for transmittal to the Advisory Council and the group will be considering the monitoring rules as well as the outline for the next meeting’s discussion on Section 8 rules.

Staff will send to 9-1-1 Advisory Council New Rules I through VII. (Rule VII will be the revised table.) If any changes are made to the table, they can be pointed out to the Council. It is not anticipated that they will be very substantial. Minor proposals can be amended at the Council level.

**Homework: Everyone is to review the table of allowable expenses to ensure it is consistent.**

**Task Item: Don will send out the new Rules I through VII as discussed and revised today in time for the subcommittee to review one last time and to approve on Nov. 16.**

**Public Comment**: None

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