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

**Friday, Nov. 16, 2017**

**Minutes**

**Present**

Liz Brooks, Flathead Co.

Denis Pitman, Yellowstone Co. ☎

Adriane Beck, Missoula Co.

Bill Nyby, Sheridan Co. ☎

Don Harris, DOA Attorney

Steve Hadden, Jefferson Co.

Quinn Ness, Public Safety Communications Bureau (PSCB)

Jennie Stapp. Montana State Library

Rhonda Sullivan, PSCB

**Absent:**

Wing Spooner, PSCB

**Minutes:** Minutes from the Nov. 2 meeting are not available because Wing has been out sick. Acting Chair, Jennie Stapp, asked for and received a motion and a second to approve the Oct. 18 executive summary. It was approved.

**Draft Rules**

Quinn sent out the subcommittee’s draft rules. He and Don Harris began with a review of New Rule III.

**NEW RULE III APPLICATION FOR CERTIFICATION**

Don brought everyone’s attention to section (6) as follows:

 (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 biennially on or before April 1.

The rule was changed to make the certification process biennial.

**NEW RULE VII ALLOWABLE USES OF FUNDS**

The chart of Allowable Uses of Funds originally prepared by Rhonda Sullivan was translated into the rule. Members were asked to additional input. Quinn pointed out one change in New Rule VII, Section (1)(d) radio system and wireless commercial services costs. He and Rhonda wanted to include “wireless commercial services costs” because the subcommittee previously discussed including costs for FirstNet services, but didn’t want to specifically refer to FirstNet since costs could be incurred from AT&T or Verizon. In addition, PSAPs currently use some of their 9-1-1 funds to pay for wireless commercial services costs. The previous wording in the rule seemed to limit these expenditures only to Land Mobile Radio services. This was another reason this language was added as well as the content in Section (1)(d)(v)

 (v) wireless commercial services fees, devices and applications that are directly used for 9-1-1 purposes;

and Section (1)(e)(i)

 (e) connectivity and infrastructure costs, including:

 (i) wired or wireless connectivity costs to provide connectivity between the call origination services, PSAPs and other public safety entities, including costs associated with: wireline trunks and lines, wireless trunks, fiber optic circuits, microwave links, repeater sites administrative lines, tandem trunks, and ring-down circuits;

In Section (1)(c)(iv) members changed a capitalized “T” in the word “Telecommunications” to a lowercase “t” for consistency.

Don also called everyone’s attention to Section (2), as follows:

(2) If an item, service or personnel listed in (1) is or will also be used or employed for a purpose other than the 9-1-1 system, the department will allocate funds based on the cost attributable only to the 9-1-1 system. A certified PSAP must:

 (a) advise the department that the item, service, or personnel is or will also be used or employed for a purpose other than the 9-1-1 system;

 (b) calculate the cost of the item, service, or personnel that is attributable to the 9-1-1 system and provide the calculation and figure to the department; and

 (c) provide information verifying the use and calculation upon request by the department.

Previously, subcommittee members had discussed the concept of pro-rating, but had not had a chance to discuss the mechanics. It was suggested that the term “operations” be substituted for “9-1-1 System,” but Don pointed out that “9-1-1 System” is a legislative term used in statute.

Bill had his dispatch supervisor review all the allowable expenses, and she agreed with all of the items listed. She originally had concerns about pre-employment costs, but realized that some agencies would need financial assistance with those costs. Other than this concern, she thought the list looked good.

Members discussed public education costs outlined in the following section:

Section (1)(l) Costs include materials that educate the community on 9-1-1 issues, such as the appropriate use of 9-1-1. Can include printing costs and postage for educational mailings and materials. Not to include food or clothing.

This last sentence seemed incongruous with language about public education costs. Rhonda clarified that clothing costs are not for uniforms, but for t-shirts or other give-away items for use outside the 9‑1‑1 center. Members discussed occasions when 9-1-1 employees would be required to wear a uniform, such as a polo shirt with a 9-1-1 logo, when involved with public education outreach programs.

Buying pizza or doughnuts with 9-1-1 funds is not appropriate. Since the wording currently states what constitutes “allowable costs” for public education, i.e. printing and postage, the last sentence is not needed. The sentence, “Not to include food or clothing” was deleted.

Geoff’s comments were reviewed. Geoff commented on NEW RULE II CERTIFICATION REQUIREMENTS that “A local government entity is a PSAP? Thus, a PSAP must be a local government entity.” Quinn does not believe that to be true, which is why both terms are defined in this section. A PSAP or dispatch center is a unit within a local government entity. It is not a legal entity unto itself.

Discussion ensued about the status of FEOC (Flathead Emergency Operations Center), which is the product of an inter-local agreement between four entities: Flathead County and the cities of Columbia Falls, Kalispell and Whitefish. Quinn noted that NEW RULE II, Section (3)(v) should apply. It states that a local government entity can be “a combination of any of the above local government entities, acting jointly.”

Geoff’s second comment relates to NEW RULE II CERTIFICATION REQUIREMENTS, “Section (3)(c) first receives all emergency wireline and wireless voice calls from persons requesting emergency services in the PSAP’s service area.” He asked about non-voice emergency communications. A lengthy conversation had previously taken place about this issue and the subcommittee proposed using the language of a “majority of non-voice communications” in the past. But, the current draft rules only apply to voice calls to 9-1-1 because NG911 has not yet been deployed statewide. Once these current rules are adopted, they will be continuously revised and updated, especially after NG911 capabilities are deployed statewide.

Geoff’s next suggestion was to insert language at the ends of NEW RULE VII, Section (1) “Funds distributed to a certified PSAP from the 9-1-1 systems account established by [HB 61 § 7] may be used by the certified PSAP for *costs directly associated with operating and maintain 9-1-1 systems, including:*

Members discussed the possibility that this wording could actually contradict some content later on in the rule. Everyone felt the current language was sufficient, and the addition of Geoff’s suggestion was not needed.

Geoff also asked if costs outlined in Section (1) (d) radio system and wireless commercial services could be shared. Since all of the allowable costs identified in Sections (a) through (l) fall under Section (2), which is “If an item, service or personnel listed in (1) is or will also be used or employed for a purpose other than the 9-1-1 system, the department will allocate funds based on the cost attributable only to the 9-1-1 system,” items identified in (d) may indeed be pro-rated. In all probably, Geoff’s comment was made before reading Section (2). So, no change is needed.

Geoff’s last comment related to NEW RULE VII, Section (3), which reads: “The department may approve additional uses of funds on a case by case basis upon request by a certified PSAP, provided that the use would clearly support operation, maintenance, or enhancement of the 9-1-1 system.” He asked if a rule was needed granting the department the authority to deny shared costs. Once again, Quinn believes this authority is granted in Section (2).

Don pointed out NEW RULE V (1)(b), which states: “The department may determine a certified PSAP is not in compliance with PSAP certification requirements if a certified PSAP:

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

So, adding language about granting the department the authority to deny shared costs is not necessary. It would be redundant.

Jennie asked if language was needed in the PSAP DEFINITIONS section and the ALLOWABLE EXPENSES section indicating that someone from the Advisory Council or the department will review the rules on a regular basis to make updates as necessary. When previously discussing allowable use of funds, one member brought up the idea of including something in the rules to the affect that as new technology becomes available, there may be more allowable expenses. The Advisory Council should have the responsibility of maintaining the currency of these rules. Don referenced MCA 2-4-314 it states that each state agency shall at least biannually review its rules to determine if it needs new rules to be adopted or is existing rules need to be modified.

So, the intent is that the department will review and update the rules to keep them current. Quinn referred members to HB61, Section 4, Rulemaking Authority (4), to provide additional reassurance. It states “The department shall adopt rules in accordance with the Montana Administrative Procedure Act

provided for in Title 2, chapter 4, to implement the provisions of this section.” We fully intend for this to be an ongoing process. This is just one portion of all the rules that the subcommittee will be addressing.

**NEW RULE VIII REPORTING, MONITORING, AND RECORDKEEPING**

Quinn reviewed the text of New Rule VII, as follows:

(1) A certified PSAP must submit a report annually, on or before April 1, documenting the status of payments received by the certified PSAP from the 9-1-1 systems account as provided in [H.B. 61, § 7] in a form prescribed by the department. The annual report must document all transactions, including distributions, expenditures, and the amount of any funds held in reserve which are directly attributable to payments received from the 9-1-1 systems account during the preceding years.

 (2) The department shall monitor transactions to ensure payments received from the 9-1-1 systems account are used as provided in NEW RULE VII. The department may determine a certified PSAP is not in compliance with PSAP certification requirements if funds are not used as provided in NEW RULE VII.

 (3) The department may audit transactions involving payments received from the 9-1-1 systems account and may request information and records necessary to determine whether a certified PSAP is in compliance with PSAP certification requirements.

 (4) A certified PSAP must keep and maintain records regarding all transactions involving payments received from the 9-1-1 systems account, including, at minimum, the following:

 (a) annual revenue and expenditure report(s);

(b) general ledger report(s) (i.e. detailed ledger queries); and

(c) supporting documentation (i.e. invoices) for each expenditure that verifies that an expenditure is allowable.

 (5) A certified PSAP must maintain the records described in (4) for a period of five years following the date of distribution or expenditure. The department may determine a certified PSAP is not in compliance with PSAP certification requirements if records are not kept and maintained as provided in this rule.

It was clarified that Section 4 says that PSAPs have to maintain these records and make them available upon request. Section 5 states that those records would be maintained for five years.

**DRAFT RULE PROPOSAL**

It was clarified that the subcommittee would recommend that the 9-1-1 Advisory Council recommend that the Department of Administration adopt New Rules I through VIII as amended. Advisory Council members will need to decide how comfortable they are with voting on rules that they perhaps have not had time to completely review, but the draft rules previous to this meeting have been sent to them and have been posted on the website. An action item to vote on these rules is on their agenda. New Rule VIII was not previously provided to the Council.

Don was asked to review the proposed timeline. He indicated that we were hoping to have the rules adopted no later than the end of February 2018. So mid-December was the original target. If the Advisory Council takes action today, it may want to cancel its Dec. meeting. If the Council does not feel comfortable with New Rule VIII, it can simply take action on New Rules I through VII. However, New Rule VIII is ready to go.

Bill made a motion to propose draft New Rules I through VIII as amended to the 9-1-1 Advisory Council. Denis seconded. The motion carried.

**Upcoming Meeting Schedule:** The next meeting is scheduled for Nov. 30. Quinn pointed out that staff’s next priority is to focus on the Scope of Work for the statewide plan. He believes that the next set of rules to be drafted will focus on the grant program, and, unfortunately, will not have the time to have draft rules ready to be reviewed by Nov. 30. Currently, we are submitting a draft of the RFP to the other subcommittee by Dec. 7. So, he recommended that both the Nov. 30 and Dec. 14 meetings be cancelled. The grant program rules have to be in place by the start of the next fiscal year, July 2018. The grant program, the Statewide Plan and the GIS Assessment are all related because they will guide the grant program investments. When the subcommittee reconvenes on January 11, 2018, then it can start discussing some of the draft rules for the grant program that won’t be contingent upon completion of the Statewide Plan and GIS Assessment. Another one is scheduled for Jan. 28, which should be cancelled. Staff will try to distribute some draft rules, but the actual conversation will start on Jan. 11, 2018.

Everyone was thanked for their patience and support.

**Public Comment**: None

**Adjournment**: The meeting was adjourned.