



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: January 8, 2018

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 2-13-566

AGENCY/BOARD: Department of Administration

RULE CLASSIFICATION: (e.g. substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Public Safety Answering Point Certification, Funding, and Monitoring

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of Public Hearing on Proposed Amendment

SUMMARY OF RULE(S):

As required under Chapter 367, L. 2017, the Department of Administration (DOA) is proposing to adopt rules to implement the revision of 9-1-1 laws adopted by the Legislature. The department proposes to adopt eight rules pertaining to Public Safety Answering Points (PSAP), including how a local government that hosts a PSAP becomes certified to receive quarterly funds.

DOA proposes to adopt New Rule I defining certain widely used terms throughout the new rules and New Rule II concerning PSAP certification to receive quarterly funding. To become certified (and receive subsequent funding), a local government entity must apply to DOA for certification by verifying that it meets all statutory requirements defined in Title 10, chapter 4. Additionally, it must receive "all emergency wireline and wireless voice calls" first "from persons requesting services in the PSAP's service area" (emphasis added). This additional requirement appears to require all local government entities sharing PSAP services to apply together under one application.

New Rule III details application requirements for certification applicants, including biennial requirements, interlocal agreements required for more than one local government participating in a single application, application deadlines, and verification requirements. Although the proposed rule appears to allow tribal governments to receive direct distribution of payments under 10-4-305, MCA, that section references payments to a "local government entity." A definition of "local government" was inserted in Chapter 367, L. 2017, and it means "a city, town, county, or consolidated city-county government or any combination of these acting jointly." Thus, it does not appear that tribal governments were intended to receive direct funding under the Legislature's statutory scheme. However, the statutory language likely allows DOA to specify allowable uses of the funds by rule, and New Rule VII allows "further distribution" of the funds to "a local government entity or tribal government entity" participating for uses specified under that rule. Thus, under the proposed rule, a tribal government may be able to receive payments from a PSAP, but it would not be a direct distribution under 10-4-305, MCA. DOA has agreed to clarify the wording in New Rule III to reflect that distributions made to tribes would be by a local government entity receiving payment under 10-4-305, MCA.

New Rule IV details the PSAP certification process, including requirements for DOA to issue written notifications of approval, denial, or conditional approval. The rule proposes a 90-day period for applicants to correct deficiencies, and an applicant may request an additional 90-days, but an applicant may also request that DOA provide immediate formal notice of denial and an opportunity for hearing.

New Rule V delineates the decertification process, which allows a certified PSAP 30 days to correct deficiencies. PSAPs may request an additional 30 days, but they may also ask that DOA provide immediate formal notice of denial and an opportunity for hearing. If a PSAP is not in compliance, New Rule V allows DOA to reduce or suspend payments to the local government entities involved, require repayment of funds expended on activities determined not to meet eligibility requirements, or decertify the local government entities.

New Rule VI restates the statutory funding allocation and provides the website for the list of the quarterly share received by local government entities that hosted PSAPs during the 2017 fiscal year.

New Rule VII adopts allowable use of funds for the 9-1-1 systems account. Section 10-4-107, MCA, states that DOA shall "allocate and distribute" the fees as well as "monitor the expenditure of program funds for . . . 9-1-1 purposes" Although the statutes do not explicitly require DOA to "ensure" the funds are used for any particular allowable use, section 10-4-108, MCA, requires DOA to adopt "procedures for repayment of funds expended on activities determined not to meet eligibility requirements"; therefore under its broad rule-making power in this chapter, DOA can likely determine the eligibility requirements, including the particular allowable uses of the 9-1-1 funds.

The allowable uses are adopted in the rule by reference. However, at the date of review, the materials were not available directly on the website listed. The department immediately moved the materials to the main website listed in the rule when notified, and DOA will segregate New Rule VII into a separate and new rule proposal, which will allow the public additional time to review and comment on the material being adopted by reference.

New Rule VII also provides that only partial payment will be made for items, services, or personnel used for purposes other than the 9-1-1 system, and the payment will be based on the cost attributable to the 9-1-1 system, and it allows DOA to approve additional uses beyond the uses adopted by reference on a case-by-case basis "provided that the use would clearly support operation, maintenance, or enhancement of the 9-1-1 system." The rule also allows the PSAP recipient to "further distribute funds" to a local government entity or tribal government participating with the certified PSAP for the approved uses.

New Rule VIII requires annual reporting of payments including "all transactions including distributions, expenditures, and the amount of any funds held in reserve directly attributable to payments received from the 9-1-1 systems account during the preceding years." The proposed rule also allows DOA to monitor and audit transactions and request information and records. New Rule VIII also requires a certified PSAP to maintain certain records for five years and allows DOA to find that a PSAP is not in compliance with PSAP certification if records are not maintained as provided in the rule.

NOTES: A public hearing is scheduled for January 12, 2018, at 11:00 a.m. in Room 7, Mitchell Building, 125 N. Roberts Street, Helena, Montana. The public comment period ends on January 19, 2018.

FULL TEXT OF NOTICE: The full text of the notice proposal may be found online at http://www.mtrules.org/gateway/Cycle_Home.asp?CID=2623.

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