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Legal Background Briefing on ...

## 911 Emergency Telephone Systems

### Overview

This Briefing provides legal background information relating to the operation of the State of Iowa's 911 emergency telephone systems as set forth in Iowa Code chapter 34A, which provides for the development, installation, and operation of 911 emergency telephone systems in the state and provides mechanisms for funding such systems. Except as otherwise indicated, references to the Iowa Code are to the 2019 Iowa Code.

### Administration

**911 Program Manager.** The Iowa Department of Homeland Security and Emergency Management (HSEMD) is responsible for administering the state's 911 emergency telephone systems through a 911 Program Manager appointed by the Director of HSEMD.<sup>1</sup> The 911 Program Manager, acting under the supervision of the Director and in consultation with the 911 Communications Council, performs the duties set forth in Iowa Code chapter 34A and as assigned by the Director.<sup>2</sup> The 911 Program Manager's statutory duties include the following:

- Submitting an annual report to the General Assembly regarding the status of the 911 emergency telephone systems, including an accounting of revenues, expenses, and the distribution of surcharges.<sup>3</sup>
- Establishing a methodology for determining and collecting cost and expense information from county joint 911 service boards, and submitting a biennial report to the General

Assembly detailing such methodology and information collected.<sup>4</sup>

**911 Communications Council.** The 14-member 911 Communications Council advises and makes recommendations to the Director and 911 Program Manager regarding the implementation of Iowa Code chapter 34A at the request of the Director, the 911 Program Manager, or as deemed necessary by the Council.<sup>5</sup> The Council may also provide certain grants.<sup>6</sup> The Council's authority is limited to issues involving Iowa Code chapter 34A and does not preempt the authority of the Iowa Utilities Board to act on issues within its jurisdiction.<sup>7</sup>

### Joint 911 Service Boards

**Membership.** Each county in the state is required to establish and maintain a joint 911 service board for the purpose of implementing a 911 service system.<sup>8</sup> A political subdivision having a public or private safety agency within its territory or jurisdiction is required to participate in a joint 911 service board.<sup>9</sup> Political subdivisions with public safety agencies have voting membership on the board.<sup>10</sup> Private safety agencies operating within the area have nonvoting membership on the board.<sup>11</sup> Townships that contract for the provision of public safety services and do not operate their own public safety agencies are not entitled to membership on the board, but the contractor providing public safety services is entitled to membership on the board according to its status as a public or private safety agency.<sup>12</sup>

**911 Service Plan.** Each joint 911 service board is required to develop and maintain a countywide 911 service plan.<sup>13</sup> The 911 service plan must include the following information:<sup>14</sup>

- A description of the 911 service area.<sup>15</sup>

- A list of all public and private safety agencies within the 911 service area.<sup>16</sup>
- The number of public safety answering points (PSAPs) within the 911 service area.<sup>17</sup>
- A statement of certain estimated costs.
- A schedule for implementation of the 911 service plan throughout the 911 service area.
- The number of telephone access lines and voice over internet protocol (VoIP) service connections capable of access to 911 in the 911 service area.<sup>18</sup>
- The total property valuation in the 911 service area.
- A plan to migrate to a next generation 911 (NG911) network.<sup>19</sup>

Any proposed changes to a 911 service plan must be submitted to the 911 Program Manager, public and private safety agencies in the 911 service area, and local exchange service providers affected by the 911 service plan.<sup>20</sup> A board may request a compliance waiver to delay the implementation of a 911 service plan in certain circumstances.<sup>21</sup>

### Alternative to Joint 911 Service Board.

A legal entity created by political divisions and public or private agencies for the purpose of jointly implementing a countywide 911 service system under Iowa Code chapter 28E may substitute the requirement for a county to establish a joint 911 service board. An alternative legal entity may be created by the agreement of the parties entitled to voting membership on a board or the agreement of the members of a board. Such alternative legal entity has all the powers of a board and any other powers granted by the joint agreement.<sup>22</sup>

**Costs of Providing 911 Service.** The costs of providing 911 service within a 911

service area is the responsibility of the joint 911 service board. A board cannot require a political subdivision to appropriate property tax revenues to fund a 911 service plan without the consent of the political subdivision. A board may include a funding formula in a 911 service plan that requires appropriations by participating political subdivisions to fund the plan, subject to the approval of all participating political subdivisions.<sup>23</sup>

**Requirements.** A joint 911 service board is required to submit an annual cost and expense report to the 911 Program Manager. If the board fails to submit the annual report, the 911 Program Manager will retain 35 cents out of each dollar allocated to the board from the emergency communications service surcharge. If the board submits a late report before the next annual reporting date, the board will receive the funds retained. If the board fails to submit a report before the next annual reporting date, the retained funds revert to the 911 emergency communications fund as carryover operating surplus.<sup>24</sup>

A joint 911 service board must designate a person to serve as a single point-of-contact to facilitate the communication of any needs, issues, or concerns regarding 911 service. The board must submit the name and contact information for the point-of-contact to the 911 Program Manager each year.<sup>25</sup>

### **Other Statutory Requirements**

#### **Free 911 Service for Pay Telephones.**

A person is prohibited from installing a pay telephone or other fixed device in a 911 service area unless the telephone or device is capable of making a free 911 call, and unless the telephone or device displays notice of free 911 service.<sup>26</sup>

#### **Local Exchange Service Information.**

A local exchange service provider must

furnish and periodically update the names, addresses, and telephone numbers of its subscribers to the NG911 network provider designated by HSEMD. Such information is to be used solely for the purposes of providing mass notification and emergency messaging services and is otherwise kept confidential. A person who uses local exchange service information beyond the scope of such emergency services is guilty of a simple misdemeanor.<sup>27</sup>

**Speech and Hearing-Impaired Devices.** Each PSAP must provide for the installation and use of telecommunications devices for the speech and hearing-impaired.<sup>28</sup>

### **Funding**

**Wire-line 911 Service Surcharge.** The wire-line 911 service surcharge provides a source of funding for the wire-line portion of the 911 service system. The surcharge is imposed at a rate of \$1 per month on each wire-line subscriber in a 911 service area.<sup>29</sup>

The wire-line 911 service surcharge is collected by local exchange service providers providing wire-line service in the 911 service area. The surcharge is collected as part of the local exchange service provider's periodic billing to wire-line subscribers. A local exchange service provider may retain 1 percent of the gross surcharges collected to recover costs for billing and collection. A local exchange service provider is not liable for any uncollected surcharge for which the local exchange service provider billed a subscriber but has not been paid. A subscriber must pay the surcharge in each 911 service area in which the subscriber receives wire-line service. However, an individual subscriber cannot be required to pay, in a single periodic billing, the surcharge on more than 100 wire-lines in a 911 service area.<sup>30</sup>

Local exchange service providers must remit collected surcharges to the respective joint 911 service board on a quarterly basis for deposit in the board's 911 service fund.<sup>31</sup> The board must use moneys deposited in the 911 service fund to pay the obligations listed below in the following order of priority:<sup>32</sup>

1. Repayment of any bonds issued by the Iowa Finance Authority to the board for the purpose of funding 911 service costs.
2. Payment of actual recurring costs of operating the 911 service plan incurred in the preceding year.
3. Payment of nonrecurring costs, not to exceed actual nonrecurring costs as approved by the 911 Program Manager.

Any moneys remaining in the 911 service fund after fully paying the above-listed obligations may accumulate as a carryover operating surplus.<sup>33</sup>

**Emergency Communications Service Surcharge.** The emergency communications service surcharge provides a source of funding for the wireless portion of the 911 service system. The surcharge is imposed at a rate of \$1 per month on each originating service number provided in the state. The surcharge is not imposed on wire-line or prepaid wireless services.<sup>34</sup>

The emergency communications service surcharge is collected by originating service providers as part of their periodic billing to subscribers.<sup>35</sup> An originating service provider may retain 1 percent of the gross surcharges collected to recover costs for billing and collection.<sup>36</sup> An originating service provider is not liable for any uncollected surcharge for which the originating service provider billed a subscriber but has not been paid.<sup>37</sup>

Originating service providers must remit collected surcharges to the 911 Program Manager on a quarterly basis for deposit in the 911 emergency communications fund.<sup>38</sup> The 911 Program Manager must distribute moneys deposited in the 911 emergency communications fund in the following order of priority:<sup>39</sup>

1. An amount allocated to HSEMD equal to the amount appropriated to HSEMD by the General Assembly. Such funds are for 911 system administration.
2. An amount allocated to joint 911 service boards and the Department of Public Safety (DPS) equal to 60 percent of the total surcharge funds generated per calendar quarter. Each joint 911 service board and DPS must receive at least \$1,000 for each PSAP within the service area of the joint 911 service board or DPS. Such funds are to be used by PSAPs for the receipt and disposition of 911 calls.
3. An amount allocated to wireless carriers equal to 10 percent of the total surcharge funds generated from July 1, 2013, until June 30, 2026. Such funds are for the recovery of costs for delivering certain enhanced 911 services.
4. An amount allocated for grants to NG911 network service providers, 911 call processing equipment providers, 911 call transport providers, and third-party 911 automatic location identification database providers to reimburse such providers for the costs of maintaining and upgrading NG911 network functionality, 911 call processing equipment, 911 call transport, and the automatic location identification database.

5. An amount allocated to joint 911 service boards and DPS for the purpose of developing and maintaining geographic information system data in support of the NG911 network, at the discretion of the 911 Program Manager and in accordance with established guidelines.
6. An amount allocated for grants to any PSAP agreeing to consolidate until June 30, 2022, at the discretion of the Director of HSEMD and subject to available funding. Such a grant may not exceed the lesser of half of the projected cost of consolidation or \$200,000.
7. An amount not to exceed \$100,000 per fiscal year for the development of public awareness and educational programs related to the use of 911 by the public, educational programs for 911 system personnel, and travel and training expenses for members of the 911 Communications Council.
8. An equal amount allocated to each PSAP for costs related to the receipt and disposition of 911 calls, including hardware and software for the NG911 network and local costs related to accessing the state's interoperable communications system.

Any moneys remaining in the 911 emergency communications fund after fully paying the above-listed obligations remain in the fund and may accumulate as a carryover operating surplus.<sup>40</sup>

**Prepaid Wireless 911 Surcharge.** The prepaid wireless 911 surcharge provides another source of funding for 911 services. The surcharge is imposed at a rate of 33 cents on each retail transaction of prepaid wireless telecommunications service in the state.<sup>41</sup> However, the surcharge rate must be adjusted to reflect any change to the emergency communications service

surcharge.<sup>42</sup> As of 2017, the surcharge is imposed at a rate of 51 cents per retail transaction.<sup>43</sup>

The prepaid wireless 911 surcharge is the only 911 funding obligation imposed on prepaid wireless telecommunications service in the state. In a minimal retail transaction, meaning a transaction involving a single purchase of 10 minutes or less, or \$5 or less, the seller may elect not to impose the surcharge on the consumer.<sup>44</sup>

The prepaid wireless 911 surcharge is collected by sellers of prepaid wireless telecommunications service from consumers. A seller of prepaid wireless telecommunications service may retain 3 percent of the collected surcharges. The seller must remit collected surcharges to the Department of Revenue (DOR) at the same time and in the same manner that sales tax revenues are remitted, as provided in Iowa Code chapter 423.<sup>45</sup>

After receiving collected surcharges from sellers, the DOR must remit the surcharges to the Treasurer of State for deposit in the 911 emergency communications fund. The DOR may retain up to 2 percent of the collected surcharges to recover administrative costs.<sup>46</sup> Moneys in the 911 emergency communication fund are distributed in the order of priority described above.

**Iowa Finance Authority.** The Iowa Finance Authority may offer bonds and notes to joint 911 service boards to fund 911 costs in accordance with Iowa Code chapter 16. The Authority may enter into a lending or purchase agreement with the bondholder or noteholder with terms and conditions for repayment of and the security for the bond or note. Any bond or note issued for the purpose of 911 emergency telephone systems financing is exempt from state taxation and the interest

on such bond or note is exempt from state income tax.<sup>47</sup>

<sup>1</sup> Iowa Code §34A.2A(1).

<sup>2</sup> Iowa Code §34A.2A(2).

<sup>3</sup> Iowa Code §34A.7A(3)(a).

<sup>4</sup> Iowa Code §34A.7A(5)(a)-(b).

<sup>5</sup> Iowa Code §34A.15(3). See Iowa Code section 34A.15(1) for the list of membership in the Council.

<sup>6</sup> Iowa Code §34A.15(4). See Iowa Code section 34A.7A(2)(f)(1)(a) for information regarding such grants.

<sup>7</sup> Iowa Code §34A.15(6).

<sup>8</sup> Iowa Code §34A.3(1)(a).

<sup>9</sup> Iowa Code §34A.3(4).

<sup>10</sup> Iowa Code §34A.3(1)(a)(1); townships and cities operating volunteer fire departments are entitled to voting membership on a joint 911 service board.

<sup>11</sup> Iowa Code §34A.3(1)(a)(1).

<sup>12</sup> Iowa Code §34A.3(1)(a)(2).

<sup>13</sup> Iowa Code §34A.3(1)(b).

<sup>14</sup> See Iowa Code §34A.2(5).

<sup>15</sup> Iowa Code section 34A.2(4) defines “911 service area” as the geographical area serviced under a 911 service plan.

<sup>16</sup> Iowa Code section 34A.2(22) defines “public or private safety agency” as a unit of state or local government, a local emergency management agency, a special purpose district, or a private firm which provides or has the authority to provide fire fighting, police, ambulance, or emergency medical services, or hazardous materials response.

<sup>17</sup> Iowa Code section 34A.2(23) defines “public safety answering point” as a 24-hour public safety communications facility that receives 911 service calls and directly dispatches emergency response services or relays calls to the appropriate public or private safety agency.

<sup>18</sup> Iowa Code section 34A.2(24) defines “voice over internet protocol service” as a service that provides real-time, two-way voice communications via Internet protocol or a successor protocol, is offered to the public, and has the capability to originate traffic to, and terminate

traffic from, the public switched telephone network or a successor network.

<sup>19</sup> Iowa Code section 34A.2(16) defines “next generation 911 network” as an Internet protocol-enabled system that enables the public to transmit digital information to PSAPs and is responsible for the delivery of all 911 messages within the state. The next generation 911 network replaces enhanced 911.

<sup>20</sup> Iowa Code §34A.3(1)(c); Iowa Code section 34A.2(15) defines “local exchange service provider” as a vendor engaged in providing telecommunications service between points within an exchange including but not limited to a competitive local exchange service provider and a local exchange carrier.

<sup>21</sup> See Iowa Code §34A.3(2).

<sup>22</sup> Iowa Code §34A.3(3).

<sup>23</sup> Iowa Code §34A.7(u1). A joint 911 service board will no longer be responsible for the costs of providing wire-line 911 service when wire-line 911 service is delivered within the board’s 911 service area via the NG911 network, per HSEMD notification. When the board is so notified, HSEMD will be responsible for wire-line costs. See 2018 Iowa Acts, ch. 1076, §10.

<sup>24</sup> Iowa Code §34A.7A(5)(c).

<sup>25</sup> Iowa Code §34A.11.

<sup>26</sup> Iowa Code §34A.4.

<sup>27</sup> Iowa Code §34A.8. A simple misdemeanor is punishable by confinement for no more than 30 days or a fine of at least \$65 but not more than \$625 or by both.

<sup>28</sup> Iowa Code §34A.9.

<sup>29</sup> Iowa Code §34A.7(1)(a).

<sup>30</sup> Iowa Code §34A.7(2),(3).

<sup>31</sup> Iowa Code §34A.7(2)(a). Iowa Code section 34A.7(4) requires each joint 911 service board to establish and maintain as a separate account a joint 911 service fund.

<sup>32</sup> See Iowa Code §34A.7(5).

<sup>33</sup> Iowa Code §34A.7(5)(b)(3).

<sup>34</sup> Iowa Code §34A.7A(1)(a).

<sup>35</sup> Iowa Code §34A.7A(1)(c). Iowa Code section 34A.2(18) defines “originating service provider” as a communications provider that allows its users or subscribers to originate 911 voice or nonvoice messages from the public to PSAPs, including but not limited to wire-line, wireless, and VoIP services.

<sup>36</sup> Iowa Code §34A.7A(1)(c)(2).

<sup>37</sup> Iowa Code §34A.7A(1)(c)(4).

<sup>38</sup> Iowa Code §34A.7A(1)(c)(3). Iowa Code section 34A.7A(2) establishes a separate 911 emergency communications fund within the State Treasury under the control of the 911 Program Manager.

<sup>39</sup> See Iowa Code §34A.7A(2).

<sup>40</sup> Iowa Code §34A.7A(2)(f)(2).

<sup>41</sup> Iowa Code §34A.7B(2). Iowa Code section 34A.2(19) defines “prepaid wireless telecommunications service” as a wireless communications service that provides the right to utilize mobile service as well as other nontelecommunications services which must be purchased in advance and sold in predetermined amounts which decline with use.

<sup>42</sup> Iowa Code §34A.7B(7).

<sup>43</sup> See Iowa Department of Homeland Security and Emergency Management, 911 Annual Report, p. 9 (2017) [www.homelandsecurity.iowa.gov/documents/misc/HSEMD\\_AnnualReport\\_2017.pdf](http://www.homelandsecurity.iowa.gov/documents/misc/HSEMD_AnnualReport_2017.pdf) (last visited November 14, 2018).

<sup>44</sup> Iowa Code §34A.7B(8),(15).

<sup>45</sup> Iowa Code §34A.7B(3),(9),(10).

<sup>46</sup> Iowa Code §34A.7B(13).

<sup>47</sup> See Iowa Code §34A.20.