

Local Board of Health Guidebook

Part Two:

Roles and Authority

PUBLIC HEALTH AND SAFETY DIVISION

**Public Health System Improvement
Office (PHSIO)**

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OVERVIEW

Local boards of health (LBOH) are entrusted with many responsibilities and opportunities to improve the health of residents in their jurisdictions. LBOH are responsible for ensuring public health obligations are met in their jurisdictions.. This raises the question, “What are the legal authorities of a board of health and what do those legal authorities mean to your role as a local board of health member?”

Sources of legal authorities related to public health agencies in Montana:

1. Montana Code Annotated
2. Administrative Rules of Montana
3. Montana courts
4. Attorney General opinions
5. Local boards of health

MONTANA CODE ANNOTATED, 2023

Most of the statutes pertaining to local boards of health are in Title 50, Health and Safety Chapter 2: Local Boards of Health. However, other mandatory duties are scattered throughout the statutes, pertaining to both local health boards and health officers. Title 50, Health and Safety Chapter 1: Administration of Public Health Laws provides additional information. Montana law requires every county and first class city (population of 10,000 or more) and second class city (population more than 5,000 and less than 10,000) have a board of health. The law provided for flexibility in the membership and type of local board of health.

TYPES OF LOCAL BOARDS OF HEALTH IN MONTANA:

1. County boards of health
2. City boards of health
3. City-county boards of health
4. District boards of health

COUNTY BOARDS OF HEALTH (§ 50-2-104, MCA)

1. Required for every county
2. Consist of county commissioners and 2 members appointed by the county commissioners **OR**
3. Minimum of five persons appointed by the county commissioners
4. Appointed members serve 3-year staggered terms
5. County commissioners establish staggered term order and all rules necessary to establish and maintain the board

CITY BOARDS OF HEALTH (§ 50-2-105, MCA)

1. Required of every 1st or 2nd class city
2. Five persons appointed by the governing body of the city
3. Appointed members serve 3-year staggered terms
4. Governing body of the city shall establish staggered term order and all regulations necessary to establish and maintain the board

CITY-COUNTY BOARDS OF HEALTH (§ 50-2-106, MCA)

1. Can be formed by mutual agreement between the county commissioners and the governing body of the city or cities
2. Membership consists of:
 - a. One person appointed by the county commissioners
 - b. One person appointed by the governing body of each city that participates in this type of board of health
 - c. Additional members appointed by mutual agreement between county commissioners and governing body or bodies of each city
 - d. Board is composed of at least five persons. Appointed members must serve 3-year staggered terms
 - e. By mutual agreement between county commissioners and the governing body of the city or cities, shall establish staggered term order and all regulations necessary to establish and maintain the board

DISTRICT BOARDS OF HEALTH (§ 50-2-107, MCA)

1. By mutual agreement, two or more adjacent counties can unite to create a district board of health
2. 1st and 2nd class cities located in the district may elect to be included in the district
3. Membership consists of:
 - a. One person appointed by county commissioners in each county in the district
 - b. One person appointed by the governing body of each city that elects to be included in the district
 - c. Additional members appointed by mutual agreement between county commissioners of each county in the district
4. Minimum of 5 persons
5. Appointed members serve 3-year staggered terms

BOARD FUNDING (§ 50-2-108, MCA)

Local board of health can be funded from the following sources:

1. General fund appropriations
2. Special levy appropriations
3. State and federal funds
4. Contributions from school boards
5. Other official and nonofficial sources
6. Local board inspection fund account, which is located with the state special revenue fund

LEGAL COUNSEL (§ 50-2-115, MCA)

The county attorney serves as legal advisor to county boards of health and city-county boards of health and represents these boards in matters relating to the functions, powers, and duties.

PURPOSE OF THE PUBLIC HEALTH SYSTEM IN MONTANA AS DEFINED IN STATUTES

The purpose of the public health system is to provide leadership and to protect and promote the public's health by (§ 50-1-105, MCA):

1. Promoting conditions in which people can be healthy
2. Providing or promoting the provision of public health services and functions including the **10 Essential Public Health Services**
3. Seeking adequate funding for services
4. Collaborating with private and public partners
5. Using the best science available
6. Ensuring public health services and functions are provided
7. Implementing public health services and functions, health promotion, and preventive health services within the state health care system

COLLABORATIONS AND RELATIONSHIPS (§ 50-1-106, MCA)

1. Variety of agreements may be formed among federal, state, local and tribal public health agencies to coordinate provisions of public health services
2. Agreements do not have to be with contiguous jurisdictions among:
 - a. Local agencies within Montana
 - b. Local agencies and tribal governments
3. Local public health agencies whose jurisdiction extends to a state border may form an agreement with an adjoining state
4. Can expand districts of health to allow inclusion of tribal governments

POWERS AND DUTIES OF A LOCAL BOARD OF HEALTH

THE MAIN DUTIES OF THE LOCAL BOARD OF HEALTH ARE TO (§ 50-2-116, MCA):

1. Recommend to local governing body appointment of a local health officer, who must be either:
 - a. A physician;
 - b. A person with a master's degree in public health;
 - c. A person with equivalent education and experience, as determined by DPHHS
 - d. DPHHS may appoint a local health officer if the local governing authority does not
2. Elect a presiding officer and other necessary officers
3. Identify to DPHHS an administrative liaison for public health that is either:
 - a. The health officer in jurisdictions with a full-time health officer OR
 - b. Highest ranking public health professional employed by the jurisdiction (i.e. lead local public health official)
4. Adopt bylaws to govern meetings
5. Hold regular meetings at least quarterly and special meetings as necessary
6. Identify, assess, prevent, and mitigate conditions of public health importance using current public health practices such as:
 - a. Epidemiological tracking and investigation
 - b. Screening and testing
 - c. Isolation and quarantine
 - d. Diagnosis, treatment, and case management
 - e. Abatement of public health nuisances
 - f. Inspections
 - g. Collecting and maintaining health information
 - h. Education and training of public health officials
 - i. Other public health measures as allowed by law
7. Protect against the introduction and spread of communicable disease
8. Supervise inspections of public establishments for sanitary conditions
9. Pursue legal actions for violations of public health laws, rules, or local regulations
10. Propose for adoption by the local governing body sewage control regulations for buildings not subject to state regulation

See 50-2-116(5) for limitations on these powers as it relates to compelling a private business to deny a customer access to the premises, access to goods or services, or the ability to access goods or services.

LOCAL BOARDS OF HEALTH MAY (§ 50-2-116, MCA):

1. Accept and spend funds from federal or state agencies, school districts, or other persons
2. Propose for adoption by the local governing body necessary fees to administer sewage control requirements
3. Propose for adoption by the local governing body rules that do not conflict with state rules:
 - a. To implement public health laws
 - b. Control of communicable disease
 - c. For sanitation and sewage treatment issues that might cause disease or adversely affect public health
 - d. Tattooing and body piercing establishments
 - e. Certain institutional controls
4. Provide other public health services and functions as considered reasonable and necessary

LOCAL BOARD OF HEALTH MEETINGS (§§ 2-3-203, 2-3-212, and 50-2-116, MCA)

Montana is among several states whose constitution and laws unambiguously require that government-decision making process be conducted openly and with reasonable opportunity for residents to participate.

These requirements include, but are not limited to:

1. Meetings must generally be open to the public
2. Advance notice of any matters that the board will hear or act upon must be provided to the public
3. Procedures must be in place that allow the public a reasonable opportunity to participate prior to the board making a decision of significant public interest
4. Minutes must be kept of all public meetings and made available for public inspection

LOCAL HEALTH OFFICER

DUTIES OF A LOCAL HEALTH OFFICER OR THEIR DESIGNEE (§ 50-2-118, MCA):

1. Report communicable diseases to DPHHS as required under [administrative rules](#)
2. Pursue legal action for violations of public health laws
3. Make inspections for conditions of public health importance
4. Issue orders for correction, destruction, or removal of the condition
5. Limit contact between people to control disease, including closure of buildings and canceling of events

OTHER LEGAL CONSIDERATIONS FOR HEALTH OFFICERS OR THEIR DESIGNEES:

1. May request assistance from law enforcement (§ 50-2-120, MCA)
2. Can issue orders to compel compliance with laws/rules (§ 50-2-123, MCA)
3. Can order removal of diseased prisoners from jail if a risk to the health of others (§ 50-2-121, MCA)
4. Must maintain confidentiality of health care information (§ 50-16-603, MCA)

LIMITS OR RESTRICTIONS ON AUTHORITIES OF PUBLIC HEALTH OFFICIALS

1. Constitutional protections including individual rights and liberties
2. Must balance individual rights and liberties with need to protect the public when coercive interventions are contemplated
3. Due process as required by both federal and Montana constitutions
4. Constitutionally sound procedures must be in place when legal actions take place
5. See § 50-2-118(3) and (4), MCA, which provide certain limitations on powers as it relates to compelling a private business to deny a customer access to the premises, access to goods or services, or the ability to access goods or services

ADMINISTRATIVE RULES OF MONTANA

Administrative rules of Montana (ARMs) are agency regulations that have the force and effect of law and generally implement state statutes. ARMs can be found at this website: <https://rules.mt.gov/>.

An example of an ARM is [37.114.203](#) REPORTABLE DISEASES AND CONDITIONS. The local health department must report any of the diseases or conditions on that list if they occur within their jurisdiction to DPHHS.

WORKING WITH YOUR LOCAL HEALTH DEPARTMENT

Your local health department delivers public health services as outlined in Montana statutes and administrative rules. A good working relationship with your health department is needed to be able to improve the health of the residents in your jurisdiction. Important partners in your health department include the health officer, lead local public health official, sanitarian, public health nurses, and other public health staff.

As a board member what can you do to help your local public health department?

- Ensure board of health meetings occur at least quarterly
- Attend and actively participate at the meetings
- Work with your local public health department on important public health issues such as policy development and implementation of programs
- Participate and be a champion for community health improvement and strategic planning
- Support securing funding for your local health department
- Access and use data to identify health priorities
- Review and be aware of the general health status of your community
- Support your health department in their process of pursuing or maintaining accreditation or Pathways Recognition