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HOUSE BILL NO. 504

INTRODUCED BY CJB

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES GOVERNING THE USE OF A PERSONAL ASSISTANT BY A PERSON WITH A DISABILITY; PROVIDING THAT THE ACTIONS OF A PERSONAL ASSISTANT ARE NOT SUBJECT TO REGULATION BY THE BOARD OF NURSING; PROVIDING DEFINITIONS; AND AMENDING SECTION 37-8-103, MCA."

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 1] requires the department of social and rehabilitation services and the department of labor to adopt rules governing the use of personal assistants by persons with disabilities.

The legislature intends that the rules adopted by the departments allow a person with a disability to arrange for and direct the use of a personal assistant. The rules must allow the person with a disability to act as the employer of the personal assistant in making the decisions of who to employ, terms of employment, length of employment, and other matters. Before a person with a disability would be allowed to act as an employer, the person must also have a plan of care approved by a physician or health care professional, stating what aspects of the disabled person's care the personal assistant may be assigned.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Agencies to adopt rules governing personal assistant services. (1) Recognizing the importance of consumer control over personal assistance services in a self-directed service model, the legislature directs the department of social and rehabilitation services and the department of labor and industry to adopt administrative rules authorizing a person with a disability to act as an employer in the employment of a personal assistant. The rules must reflect both the rights and protection guaranteed to workers under existing labor law and ensure that consumers of personal assistant services have day-to-day control, supervision, and direction over those services.

(2) As used in this section, the following definitions apply:

1 (a) "Ancillary services" means services ancillary to basic services provided to an individual in need
2 of home-based care who needs one or more of the following basic services:

3 (i) homemaker-type services, including but not limited to shopping, laundry, cleaning, and seasonal
4 chores;

5 (ii) companion-type services, including but not limited to transportation, letter writing, reading mail,
6 assisting with alternative communication, and escort; and

7 (iii) assistance with cognitive tasks, including but not limited to managing finances, planning
8 activities, prompting, and problem solving.

9 (b) "Basic services" includes assistance:

10 (i) getting in and out of bed, a wheelchair, or a motor vehicle; and

11 (ii) with routine bodily functions including:

12 (A) health maintenance activities;

13 (B) bathing and personal hygiene;

14 (C) dressing and grooming;

15 (D) feeding, including preparation and cleanup; and

16 (E) setup, use, and maintenance of assistive technologies.

17 (c) "Personal assistant services" means those basic and ancillary services that enable an individual
18 in need of home-based care to live in the individual's home and community rather than in an institution and
19 to carry out functions of daily living, self-care, and mobility.

20 (d) "Individual in need of home-based services" means an individual with a physical or mental
21 impairment who requires assistance in completing functions of daily living, self-care, and mobility.

22
23 **Section 2.** Section 37-8-103, MCA, is amended to read:

24 **"37-8-103. Exemptions -- limitations on authority conferred.** (1) ~~No provisions of this law~~ This
25 chapter may not be construed as prohibiting:

26 (a) gratuitous nursing by friends or members of the family;

27 (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

28 (c) nursing assistance in the case of an emergency;

29 (d) the practice of nursing by students enrolled in approved nursing education programs;

30 (e) the practice of nursing in this state by any legally qualified nurse of another state whose

1 engagement requires the nurse to accompany and care for a patient temporarily residing in this state during
2 the period of one ~~such~~ engagement not to exceed 6 months in length, provided that person does not
3 represent to the public that the person is a nurse licensed to practice in this state;

4 (f) the practice of any legally qualified nurse of another state who is employed by the United States
5 government or any bureau, division, or agency ~~thereof~~ of the United States while in the discharge of that
6 nurse's official duties;

7 (g) nursing or care of the sick, with or without compensation, when done in connection with the
8 practice of the religious tenets of any well-established religion or denomination by adherents ~~thereof~~ of the
9 religion or denomination;

10 (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent
11 ~~such that the~~ care may be provided by a parent or guardian;

12 (i) the execution of a death sentence pursuant to 46-19-103; and

13 (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by
14 the board.

15 (2) This chapter may not be construed:

16 (a) as conferring any authority to practice medicine, surgery, or any combination ~~thereof~~ of
17 medicine or surgery;

18 (b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in
19 the state of Montana; or

20 (c) to permit any person to undertake the treatment of disease by any of the methods employed
21 in ~~these~~ the healing arts unless the licensee has been qualified under the applicable law or laws licensing
22 the practice of those professions or healing arts in the state of Montana.

23 (3) (a) This chapter may not be construed to apply to a personal assistant performing health
24 maintenance activities and acting at the direction of a person with a disability.

25 (b) The following definitions apply to this subsection:

26 (i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician
27 assistant-certified, nurse practitioner, registered nurse, or occupational therapist or a medical social worker
28 working as a member of a case management team for the purposes of the home and community-based
29 services program of the department of social and rehabilitation services.

30 (ii) "Health maintenance activities" includes urinary systems management, bowel treatments,

1 administration of medications, and wound care if the activities in the opinion of the physician or other
2 health care professional for the person with a disability could be performed by the person if the person were
3 physically capable and if the procedure may be safely performed in the home.

4 (iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

5

6 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
7 integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 1].

8

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0504 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill requiring the Department of Social and Rehabilitation Services (SRS) and the Department of Labor and Industry (DOLI) to adopt rules governing the use of a personal assistant by a person with a disability.

ASSUMPTIONS:


1. There are currently 30 persons who participate in the Montana Medicaid self-directed personal assistant program. Of these individuals, 30% (9) have three visits per week and 10% (3) have one visit per month. The remaining 60% do not require skilled nursing intervention and would not be affected by this legislation. This service is estimated to cost \$67.51 per visit.
2. According to WestMont, it is estimated that this legislation would increase the number of persons participating in the self-directed program to 50.
3. For the purposes of this fiscal note, it is assumed that the number of visits would increase to 40% (20) receiving three visits per week and 20% (10) receiving one service per month.
4. The functions now performed by a Registered Nurse will be performed by a personal care attendant. This cost is estimated at \$11.03 per hour. Each visit requires one hour.
5. In summary, currently there are 1,440 visits per year at \$67.51 a visit, or a Medicaid annual cost of \$97,200. In the 1997 biennium, there will be 3,240 visits per year at \$11.03 a visit, or \$35,700 annual cost, with a cost savings of \$61,500 a year. And the federal government will share in approximately 70% of the program cost.

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
SRS cost savings:		
Benefits	(61,500)	(61,500)

Funding:

General Fund (01)	(18,600)	(19,100)
Federal special revenue (03)	<u>(42,900)</u>	<u>(42,400)</u>
Total	(61,500)	(61,500)

 2-15-95
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 JOHN COBB, PRIMARY SPONSOR DATE
 Fiscal Note for HB0504, as introduced

HB 504

APPROVED BY COM ON
HUMAN SERVICES & AGING

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House BILL NO. 504

INTRODUCED BY CJB

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STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 1] requires the department of social and rehabilitation services and the department of labor to adopt rules governing the use of personal assistants by persons with disabilities.

The legislature intends that the rules adopted by the departments allow a person with a disability to arrange for and direct the use of a personal assistant. The rules must allow the person with a disability to act as the employer of the personal assistant in making the decisions of who to employ, terms of employment, length of employment, and other matters. Before a person with a disability would be allowed to act as an employer, the person must also have a plan of care approved by a physician or health care professional, stating what aspects of the disabled person's care the personal assistant may be assigned.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Agencies to adopt rules governing personal assistant services. (1) Recognizing the importance of consumer control over personal assistance services in a self-directed service model, the legislature directs the department of social and rehabilitation services and the department of labor and industry to adopt administrative rules authorizing a person with a disability to act as an employer in the employment of a personal assistant. The rules must reflect both the rights and protection guaranteed to workers under existing labor law and ensure that consumers of personal assistant services have day-to-day control, supervision, and direction over those services.

(2) As used in this section, the following definitions apply:

1 (a) "Ancillary services" means services ancillary to basic services provided to an individual in need
2 of home-based care who needs one or more of the following basic services:

3 (i) homemaker-type services, including but not limited to shopping, laundry, cleaning, and seasonal
4 chores;

5 (ii) companion-type services, including but not limited to transportation, letter writing, reading mail,
6 assisting with alternative communication, and escort; and

7 (iii) assistance with cognitive tasks, including but not limited to managing finances, planning
8 activities, prompting, and problem solving.

9 (b) "Basic services" includes assistance:

10 (i) getting in and out of bed, a wheelchair, or a motor vehicle; and

11 (ii) with routine bodily functions including:

12 (A) health maintenance activities;

13 (B) bathing and personal hygiene;

14 (C) dressing and grooming;

15 (D) feeding, including preparation and cleanup; and

16 (E) setup, use, and maintenance of assistive technologies.

17 (c) "Personal assistant services" means those basic and ancillary services that enable an individual
18 in need of home-based care to live in the individual's home and community rather than in an institution and
19 to carry out functions of daily living, self-care, and mobility.

20 (d) "Individual in need of home-based services" means an individual with a physical or mental
21 impairment who requires assistance in completing functions of daily living, self-care, and mobility.

22

23 **Section 2.** Section 37-8-103, MCA, is amended to read:

24 **"37-8-103. Exemptions -- limitations on authority conferred.** (1) ~~No provisions of this law~~ This
25 chapter may not be construed as prohibiting:

26 (a) gratuitous nursing by friends or members of the family;

27 (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

28 (c) nursing assistance in the case of an emergency;

29 (d) the practice of nursing by students enrolled in approved nursing education programs;

30 (e) the practice of nursing in this state by any legally qualified nurse of another state whose

1 engagement requires the nurse to accompany and care for a patient temporarily residing in this state during
2 the period of one ~~such~~ engagement not to exceed 6 months in length, provided that person does not
3 represent to the public that the person is a nurse licensed to practice in this state;

4 (f) the practice of any legally qualified nurse of another state who is employed by the United States
5 government or any bureau, division, or agency ~~thereof~~ of the United States while in the discharge of that
6 nurse's official duties;

7 (g) nursing or care of the sick, with or without compensation, when done in connection with the
8 practice of the religious tenets of any well-established religion or denomination by adherents ~~thereof~~ of the
9 religion or denomination;

10 (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent
11 ~~such~~ that the care may be provided by a parent or guardian;

12 (i) the execution of a death sentence pursuant to 46-19-103; and

13 (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by
14 the board.

15 (2) This chapter may not be construed;

16 (a) as conferring any authority to practice medicine, surgery, or any combination ~~thereof~~ of
17 medicine or surgery;

18 (b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in
19 the state of Montana; or

20 (c) to permit any person to undertake the treatment of disease by any of the methods employed
21 in ~~these~~ the healing arts unless the licensee has been qualified under the applicable law or laws licensing
22 the practice of those professions or healing arts in the state of Montana.

23 (3) (a) This chapter may not be construed to apply to a personal assistant performing health
24 maintenance activities and acting at the direction of a person with a disability.

25 (b) The following definitions apply to this subsection:

26 (i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician
27 assistant-certified, nurse practitioner, registered nurse, or occupational therapist or a medical social worker
28 working as a member of a case management team for the purposes of the home and community-based
29 services program of the department of social and rehabilitation services.

30 (ii) "Health maintenance activities" includes urinary systems management, bowel treatments,

1 administration of medications, and wound care if the activities in the opinion of the physician or other
2 health care professional for the person with a disability could be performed by the person if the person were
3 physically capable and if the procedure may be safely performed in the home.

4 (iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

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6 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
7 integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 1].

8

-END-

1 HOUSE BILL NO. 504

2 INTRODUCED BY COBB

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF SOCIAL AND
 5 REHABILITATION SERVICES AND THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES
 6 GOVERNING THE USE OF A PERSONAL ASSISTANT BY A PERSON WITH A DISABILITY; PROVIDING
 7 THAT THE ACTIONS OF A PERSONAL ASSISTANT ARE NOT SUBJECT TO REGULATION BY THE BOARD
 8 OF NURSING; PROVIDING DEFINITIONS; ~~AND~~ AMENDING SECTION 37-8-103, MCA; AND PROVIDING
 9 AN IMMEDIATE EFFECTIVE DATE."

10
11 STATEMENT OF INTENT

12 A statement of intent is necessary for this bill because [section 1] requires the department of social
 13 and rehabilitation services and the department of labor to adopt rules governing the use of personal
 14 assistants by persons with disabilities.

15 The legislature intends that the rules adopted by the departments allow a person with a disability
 16 to arrange for and direct the use of a personal assistant. The rules must allow the person with a disability
 17 to act as the employer of the personal assistant in making the decisions of who to employ, terms of
 18 employment, length of employment, and other matters. Before a person with a disability would be allowed
 19 to act as an employer, the person must also have a plan of care approved by a physician or health care
 20 professional, stating what aspects of the disabled person's care the personal assistant may be assigned.

21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
 24 NEW SECTION. **Section 1. Agencies to adopt rules governing personal assistant**
 25 **services.** (1) Recognizing the importance of consumer control over personal assistance services in a
 26 self-directed service model, the legislature directs the department of social and rehabilitation services and
 27 the department of labor and industry to adopt administrative rules authorizing a person with a disability to
 28 act as an employer in the employment of a personal assistant. The rules must reflect both the rights and
 29 protection guaranteed to workers under existing labor law and ensure that consumers of personal assistant
 30 services have day-to-day control, supervision, and direction over those services.

1 (2) As used in this section, the following definitions apply:

2 (a) "Ancillary services" means services ancillary to basic services provided to an individual in need
3 of home-based care who needs one or more of the following basic services:

4 (i) homemaker-type services, including but not limited to shopping, laundry, cleaning, and seasonal
5 chores;

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7 assisting with alternative communication, and escort; and

8 (iii) assistance with cognitive tasks, including but not limited to managing finances, planning
9 activities, prompting, and problem solving.

10 (b) "Basic services" includes assistance:

11 (i) getting in and out of bed, a wheelchair, or a motor vehicle; and

12 (ii) with routine bodily functions including:

13 (A) health maintenance activities;

14 (B) bathing and personal hygiene;

15 (C) dressing and grooming;

16 (D) feeding, including preparation and cleanup; and

17 (E) setup, use, and maintenance of assistive technologies.

18 (c) "Personal assistant services" means those basic and ancillary services that enable an individual
19 in need of home-based care to live in the individual's home and community rather than in an institution and
20 to carry out functions of daily living, self-care, and mobility.

21 (d) "Individual in need of home-based services" means an individual with a physical or mental
22 impairment who requires assistance in completing functions of daily living, self-care, and mobility.

23 (3) THE RULES AUTHORIZED UNDER THIS SECTION MUST BE ADOPTED BY JULY 1, 1995.

24

25 **Section 2.** Section 37-8-103, MCA, is amended to read:

26 **"37-8-103. Exemptions -- limitations on authority conferred.** (1) ~~No provisions of this law~~ This
27 chapter may not be construed as prohibiting:

28 (a) gratuitous nursing by friends or members of the family;

29 (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

30 (c) nursing assistance in the case of an emergency;

- 1 (d) the practice of nursing by students enrolled in approved nursing education programs;
- 2 (e) the practice of nursing in this state by any legally qualified nurse of another state whose
3 engagement requires the nurse to accompany and care for a patient temporarily residing in this state during
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5 represent to the public that the person is a nurse licensed to practice in this state;
- 6 (f) the practice of any legally qualified nurse of another state who is employed by the United States
7 government or any bureau, division, or agency ~~thereof~~ of the United States while in the discharge of that
8 nurse's official duties;
- 9 (g) nursing or care of the sick, with or without compensation, when done in connection with the
10 practice of the religious tenets of any well-established religion or denomination by adherents ~~thereof~~ the
11 religion or denomination;
- 12 (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent
13 ~~such~~ that the care may be provided by a parent or guardian;
- 14 (i) the execution of a death sentence pursuant to 46-19-103; and
- 15 (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by
16 the board.
- 17 (2) This chapter may not be construed:
- 18 (a) as conferring any authority to practice medicine, surgery, or any combination ~~thereof~~ of
19 medicine or surgery;
- 20 (b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in
21 the state of Montana; or
- 22 (c) to permit any person to undertake the treatment of disease by any of the methods employed
23 in ~~these~~ the healing arts unless the licensee has been qualified under the applicable law or laws licensing
24 the practice of those professions or healing arts in the state of Montana.
- 25 (3) (a) This chapter may not be construed to apply to a personal assistant performing health
26 maintenance activities and acting at the direction of a person with a disability.
- 27 (b) The following definitions apply to this subsection:
- 28 (i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician
29 assistant-certified, nurse practitioner, registered nurse, or occupational therapist or a medical social worker
30 working as a member of a case management team for the purposes of the home and community-based

1 services program of the department of social and rehabilitation services.

2 (ii) "Health maintenance activities" includes urinary systems management, bowel treatments,
3 administration of medications, and wound care if the activities in the opinion of the physician or other
4 health care professional for the person with a disability could be performed by the person if the person were
5 physically capable and if the procedure may be safely performed in the home.

6 (iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

7
8 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
9 integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 1].

10
11 NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
12 APPROVAL.

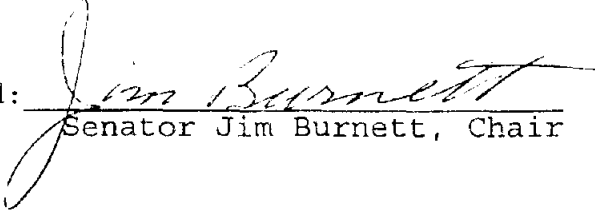
13 -END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 16, 1995

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration HB 504 (third reading copy -- blue), respectfully report that HB 504 be amended as follows and as so amended be concurred in.

Signed: 
Senator Jim Burnett, Chair

That such amendments read:

1. Title, lines 8 and 9.

Following: "~~AND~~" on line 8

Insert: "AND"

Following: "MCA" on line 8

Strike: the remainder of line 8 through "DATE" on line 9

2. Page 1, line 15.

Following: "disability"

Insert: "or an immediately involved representative, such as a parent or guardian,"

3. Page 1, line 17.

Following: "as"

Insert: "though the person is"

Following: "employer"

Insert: ", for the purposes of selection, management, and supervision,"

4. Page 1, line 18.

Following: "matters"

Insert: ", although the personal assistant is the employee of another person or entity"

5. Page 1, line 19.

Following: "as"


Strike: "an"

Insert: "though that person is the"

6. Page 1, line 21.

Following: line 20

Insert: "The contents of a plan of care must be addressed by rule and must include the individual's needs for personal assistance services, a plan for emergency back-up, and tasks assigned to the personal assistant. The plan of care may also address training, recruitment, and replacement of personal assistants and schedules for supervision and annual


Amd. Coord.
Sec. of Senate

Sen. Eck
Senator Carrying Bill

HB 504
SENATE
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review of care by the health care professional."

7. Page 1, line 28.

Following: "as"

Strike: "an"

Insert: "though the person is the"

Strike: "in the employment"

Insert: ", for the purposes of selection, management, and supervision,"

Following: "assistant"

Insert: ", although the personal assistant is the employee of another person or entity"

8. Page 2, line 23.

Strike: subsection (3) in its entirety

Insert: "(3) The department of social and rehabilitation services is not required to provide personal care services as part of the medicaid program in a self-directed service model as described in this section unless the personal assistant is an employee of an entity willing to provide the protections guaranteed to workers under existing labor laws, including but not limited to the payment of workers' compensation and unemployment insurance premiums.

(4) This section does not prohibit the department of social and rehabilitation services from determining the amount, scope, and duration of the personal assistance services provided under the medicaid program, nor does this section mandate personal assistance services.

(5) Medical and related liability for personal care services provided pursuant to this section rests with the person directing the services."

9. Page 4, lines 11 and 12.

Strike: section 4 in its entirety

-END-

1 HOUSE BILL NO. 504
2 INTRODUCED BY COBB
3

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7 THAT THE ACTIONS OF A PERSONAL ASSISTANT ARE NOT SUBJECT TO REGULATION BY THE BOARD
8 OF NURSING; PROVIDING DEFINITIONS; ~~AND~~ AND AMENDING SECTION 37-8-103, MCA; ~~AND~~
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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11 STATEMENT OF INTENT

12 A statement of intent is necessary for this bill because [section 1] requires the department of social
13 and rehabilitation services and the department of labor to adopt rules governing the use of personal
14 assistants by persons with disabilities.

15 The legislature intends that the rules adopted by the departments allow a person with a disability
16 OR AN IMMEDIATELY INVOLVED REPRESENTATIVE, SUCH AS A PARENT OR GUARDIAN, to arrange for
17 and direct the use of a personal assistant. The rules must allow the person with a disability to act as
18 THOUGH THE PERSON IS the employer, FOR THE PURPOSES OF SELECTION, MANAGEMENT, AND
19 SUPERVISION, of the personal assistant in making the decisions of who to employ, terms of employment,
20 length of employment, and other matters, ALTHOUGH THE PERSONAL ASSISTANT IS THE EMPLOYEE OF
21 ANOTHER PERSON OR ENTITY. Before a person with a disability would be allowed to act as ~~an~~ THOUGH
22 THAT PERSON IS THE employer, the person must also have a plan of care approved by a physician or
23 health care professional, stating what aspects of the disabled person's care the personal assistant may be
24 assigned.

25 THE CONTENTS OF A PLAN OF CARE MUST BE ADDRESSED BY RULE AND MUST INCLUDE THE
26 INDIVIDUAL'S NEEDS FOR PERSONAL ASSISTANCE SERVICES, A PLAN FOR EMERGENCY BACK-UP, AND
27 TASKS ASSIGNED TO THE PERSONAL ASSISTANT. THE PLAN OF CARE MAY ALSO ADDRESS
28 TRAINING, RECRUITMENT, AND REPLACEMENT OF PERSONAL ASSISTANTS AND SCHEDULES FOR
29 SUPERVISION AND ANNUAL REVIEW OF CARE BY THE HEALTH CARE PROFESSIONAL.
30

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2

3 NEW SECTION. Section 1. Agencies to adopt rules governing personal assistant
4 services. (1) Recognizing the importance of consumer control over personal assistance services in a
5 self-directed service model, the legislature directs the department of social and rehabilitation services and
6 the department of labor and industry to adopt administrative rules authorizing a person with a disability to
7 act as ~~an~~ THOUGH THE PERSON IS THE employer in the employment, FOR THE PURPOSES OF
8 SELECTION, MANAGEMENT, AND SUPERVISION, of a personal assistant, ALTHOUGH THE PERSONAL
9 ASSISTANT IS THE EMPLOYEE OF ANOTHER PERSON OR ENTITY. The rules must reflect both the rights
10 and protection guaranteed to workers under existing labor law and ensure that consumers of personal
11 assistant services have day-to-day control, supervision, and direction over those services.

12 (2) As used in this section, the following definitions apply:

13 (a) "Ancillary services" means services ancillary to basic services provided to an individual in need
14 of home-based care who needs one or more of the following basic services:

15 (i) homemaker-type services, including but not limited to shopping, laundry, cleaning, and seasonal
16 chores;

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18 assisting with alternative communication, and escort; and

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20 activities, prompting, and problem solving.

21 (b) "Basic services" includes assistance:

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24 (A) health maintenance activities;

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30 in need of home-based care to live in the individual's home and community rather than in an institution and

1 to carry out functions of daily living, self-care, and mobility.

2 (d) "Individual in need of home-based services" means an individual with a physical or mental
3 impairment who requires assistance in completing functions of daily living, self-care, and mobility.

4 ~~(3) THE RULES AUTHORIZED UNDER THIS SECTION MUST BE ADOPTED BY JULY 1, 1996.~~

5 (3) THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES IS NOT REQUIRED TO
6 PROVIDE PERSONAL CARE SERVICES AS PART OF THE MEDICAID PROGRAM IN A SELF-DIRECTED
7 SERVICE MODEL AS DESCRIBED IN THIS SECTION UNLESS THE PERSONAL ASSISTANT IS AN
8 EMPLOYEE OF AN ENTITY WILLING TO PROVIDE THE PROTECTIONS GUARANTEED TO WORKERS
9 UNDER EXISTING LABOR LAWS, INCLUDING BUT NOT LIMITED TO THE PAYMENT OF WORKERS'
10 COMPENSATION AND UNEMPLOYMENT INSURANCE PREMIUMS.

11 (4) THIS SECTION DOES NOT PROHIBIT THE DEPARTMENT OF SOCIAL AND REHABILITATION
12 SERVICES FROM DETERMINING THE AMOUNT, SCOPE, AND DURATION OF THE PERSONAL
13 ASSISTANCE SERVICES PROVIDED UNDER THE MEDICAID PROGRAM, NOR DOES THIS SECTION
14 MANDATE PERSONAL ASSISTANCE SERVICES.

15 (5) MEDICAL AND RELATED LIABILITY FOR PERSONAL CARE SERVICES PROVIDED PURSUANT
16 TO THIS SECTION RESTS WITH THE PERSON DIRECTING THE SERVICES.

17

18 **Section 2.** Section 37-8-103, MCA, is amended to read:

19 **"37-8-103. Exemptions -- limitations on authority conferred.** (1) ~~No provisions of this law~~ This
20 chapter may not be construed as prohibiting:

21 (a) gratuitous nursing by friends or members of the family;

22 (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

23 (c) nursing assistance in the case of an emergency;

24 (d) the practice of nursing by students enrolled in approved nursing education programs;

25 (e) the practice of nursing in this state by any legally qualified nurse of another state whose
26 engagement requires the nurse to accompany and care for a patient temporarily residing in this state during
27 the period of one ~~such~~ engagement not to exceed 6 months in length, provided that person does not
28 represent to the public that the person is a nurse licensed to practice in this state;

29 (f) the practice of any legally qualified nurse of another state who is employed by the United States
30 government or any bureau, division, or agency ~~thereof~~ of the United States while in the discharge of that

1 nurse's official duties;

2 (g) nursing or care of the sick, with or without compensation, when done in connection with the
3 practice of the religious tenets of any well-established religion or denomination by adherents ~~thereof~~ of the
4 religion or denomination;

5 (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent
6 ~~such~~ that the care may be provided by a parent or guardian;

7 (i) the execution of a death sentence pursuant to 46-19-103; and

8 (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by
9 the board.

10 (2) This chapter may not be construed:

11 (a) as conferring any authority to practice medicine, surgery, or any combination ~~thereof~~ of
12 medicine or surgery;

13 (b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in
14 the state of Montana; or

15 (c) to permit any person to undertake the treatment of disease by any of the methods employed
16 in ~~these~~ the healing arts unless the licensee has been qualified under the applicable law or laws licensing
17 the practice of those professions or healing arts in the state of Montana.

18 (3) (a) This chapter may not be construed to apply to a personal assistant performing health
19 maintenance activities and acting at the direction of a person with a disability.

20 (b) The following definitions apply to this subsection:

21 (i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician
22 assistant-certified, nurse practitioner, registered nurse, or occupational therapist or a medical social worker
23 working as a member of a case management team for the purposes of the home and community-based
24 services program of the department of social and rehabilitation services.

25 (ii) "Health maintenance activities" includes urinary systems management, bowel treatments,
26 administration of medications, and wound care if the activities in the opinion of the physician or other
27 health care professional for the person with a disability could be performed by the person if the person were
28 physically capable and if the procedure may be safely performed in the home.

29 (iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

30

1 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
2 integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 1].

3

4 ~~NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND~~
5 ~~APPROVAL.~~

6

-END-