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2 INTRODUCED BY Shea Harrington Lynch Drake ^{Senate} BILL NO. 260
3 *McKinn*

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PROGRAM WITHIN THE DEPARTMENT OF
5 COMMERCE FOR LICENSING OF HOME COMPANIONS; PROVIDING THE POWERS AND DUTIES OF THE
6 DEPARTMENT; PROHIBITING THE USE OF NAMES OR INITIALS INDICATING LICENSURE UNLESS
7 LICENSED BY THE DEPARTMENT; PROVIDING A PENALTY; PROVIDING REQUIREMENTS FOR LICENSURE;
8 PROVIDING FOR FEES COMMENSURATE WITH COSTS OF THE LICENSING PROGRAM; AND PROVIDING
9 EFFECTIVE DATES."

10
11 WHEREAS, the number of elderly persons in Montana will increase dramatically in the next several
12 decades because of the attractiveness of Montana as a place to retire and because of the aging of the
13 "baby boomers"; and

14 WHEREAS, Montana does not yet have the range of facilities, amenities, personnel, and living
15 options that other states have that are necessary not only to provide elderly persons or persons with
16 disabilities with a good quality of life but that are necessary to control health care costs and Montana's
17 Medicaid budget; and

18 WHEREAS, many elderly persons or persons with disabilities would be able to continue to live at
19 home or live more easily in a home-like setting without resort to a long-term care facility if those elderly
20 persons or persons with disabilities had available to them honest, dependable persons trained in personal
21 care who could be hired to provide assistance with cleaning, cooking, transportation, bathing, and laundry
22 and also provide companionship; and

23 WHEREAS, the creation of a licensing program to ensure that persons who provide that assistance
24 and companionship are sufficiently skilled and screened would be of great benefit to elderly persons or
25 persons with disabilities who want to remain in their own homes or who want a measure of increased
26 confidence that a person hired to assist them with activities of daily living possesses the expected skills
27 and character.

28
29 STATEMENT OF INTENT

30 A statement of intent is required for this bill because [sections 3 and 5] require the department of

1 commerce to adopt rules.

2 It is the intent of the legislature that a primary component of the licensure of home companions be
3 the background checks required by [section 5]. To this end, the department should put as much if not more
4 emphasis upon the background checks and other methods of proving honesty and trustworthiness as it
5 does upon required skills, training, or experience of home companions.

6 The rules must also consider the fact that licensed home companions will work in unsupervised
7 situations, requiring good judgment and recognition of those subject or skill areas in which the home
8 companion is untrained.

9

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

11

12 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following
13 definitions apply:

14 (1) "Client" means the person employing a licensed home companion.

15 (2) "Department" means the department of commerce provided for in 2-15-1801.

16 (3) "Licensed home companion" means a person licensed by the department pursuant to the
17 provisions of [sections 1 through 10].

18

19 NEW SECTION. **Section 2. Findings and purpose.** The legislature finds that many elderly persons
20 or persons with disabilities may be able to live by themselves in their own homes, or in a homelike setting,
21 if a trustworthy and competent companion is available to assist those elderly persons or persons with
22 disabilities with routine functions of daily living that do not require the level of care available in a long-term
23 care facility. Many of these elderly persons or persons with disabilities do not have younger friends to
24 assist them with these functions and do not need to hire skilled nursing care. The legislature finds that
25 those elderly persons or persons with disabilities need assurance that a person whom they would employ
26 to be an assistant and a companion is both trained and sufficiently trustworthy to be left in a client's home,
27 to drive a client's automobile, or to make deposits to or withdrawals from a client's bank account. The
28 legislature finds that the creation of a program for licensing of home companions will fill a niche for elderly
29 persons or persons with disabilities between those persons getting along poorly by themselves and moving
30 to a long-term care facility or personal care residence. To this end, the legislature intends to create an

1 efficient, low-cost licensing program that will be run directly by the department without the use of a
2 licensing board.

3

4 **NEW SECTION. Section 3. Duties of department -- rules.** The department shall:

5 (1) administer a program pursuant to [sections 1 through 10] for the licensing of home companions;

6 (2) determine and pay costs of the licensing program provided for in [sections 1 through 10] in a
7 manner similar to the assessment of costs pursuant to 37-1-101(6) for a licensing program administered
8 by a professional or occupational licensing board;

9 (3) exercise those powers and duties provided for in Title 37, chapter 1, parts 1 and 3, for the
10 purposes of [sections 1 through 10]; and

11 (4) adopt rules necessary to implement [sections 1 through 10].

12

13 **NEW SECTION. Section 4. Unlawful to indicate licensure without valid certificate -- misdemeanor**

14 **penalty.** A person using the abbreviations "L.H.C.", the designation "licensed home companion", or other
15 words or initials or a sign, card, or device indicating licensure pursuant to [sections 1 through 10] without
16 possessing a valid license issued by the department pursuant to [sections 1 through 10] is guilty of a
17 misdemeanor and on conviction may be fined not more than \$500 or imprisoned in a county jail for not
18 more than 90 days, or both.

19

20 **NEW SECTION. Section 5. Requirements for licensure.** The department shall adopt by rule

21 reasonable requirements for licensure of licensed home companions. The rules must provide for background
22 investigations and other methods of proving fitness of character and must specify those disabilities or
23 categories of clients with needs that are beyond the skill level of a licensed home companion and therefore
24 are not to be provided the services of a licensed home companion. For these purposes, the department
25 shall provide that the provision of services by a licensed home companion to persons whose needs are
26 beyond the skills of a licensed home companion constitutes unprofessional conduct for which a licensed
27 home companion is subject to license revocation. The rules may provide for different levels of licensure
28 dependent upon the needs of the client. The rules must also require skills, training, or experience
29 appropriate to the level of the licensure in the subjects of:

30 (1) needs and care of elderly persons or persons with disabilities;

- 1 (2) first aid and personal emergency management; and
2 (3) other subjects determined appropriate by the department.

3
4 **NEW SECTION. Section 6. Bond required.** A person successfully passing a department
5 examination for licensure pursuant to [sections 1 through 10] shall, before being licensed by the
6 department, file with the department a bond for the term of the license from an insurer acceptable to the
7 department in the amount of \$2,000. The bond must run to the state of Montana and be conditioned upon
8 the payment of any damages, fees, or costs arising from the person's service as a licensed home
9 companion. In the event of violation of the terms of the bond, the department shall collect the principal
10 amount of the bond in a proceeding provided for by rule or so much of that amount as may be required and
11 shall pay the amount to the client.

12
13 **NEW SECTION. Section 7. License application -- examination required -- issuance of license.** A
14 person requesting licensure as a licensed home companion shall make application for licensure on a form
15 provided by the department. The department shall require passage of a written examination as a
16 prerequisite to licensure. An applicant for licensure must be licensed by the department upon:

- 17 (1) passage of the examination;
18 (2) satisfaction of the requirements of the department adopted pursuant to [sections 3 and 5] to
19 ensure honesty, trustworthiness, and appropriate skills, training, or experience;
20 (3) filing of the bond required by [section 6]; and
21 (4) payment of fees required by the department pursuant to [section 9].

22
23 **NEW SECTION. Section 8. Renewal of license.** A license issued by the department pursuant to
24 [sections 1 through 10] expires at the time provided by department rule. A person intending to renew a
25 license shall pay a renewal fee to the department, file a bond with the department for the period of
26 licensure in the same manner and upon the same conditions as provided in [section 6], and provide the
27 department with further evidence as the department may require regarding the continuing good character
28 of the applicant. An examination may not be required by the department for renewal of a license.

29
30 **NEW SECTION. Section 9. Fees.** The department may establish by rule and collect the following

1 fees for the purposes of [sections 1 through 10], which must be commensurate with the costs of the
2 licensing program provided for in [sections 1 through 10]:

- 3 (1) an application fee;
- 4 (2) an examination fee;
- 5 (3) a licensing fee;
- 6 (4) a renewal fee; and
- 7 (5) a late renewal fee.

8
9 **NEW SECTION. Section 10. Deposit of fees and fines.** Fees and fines collected by the department
10 pursuant to [sections 1 through 10] must be deposited in an account in the state special revenue fund and
11 are subject to appropriation for the purposes provided for in [sections 1 through 10].

12
13 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 10] are intended to be
14 codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 10].

15
16 **NEW SECTION. Section 12. Effective dates.** (1) Except as provided in subsection (2), [this act]
17 is effective October 1, 1997.

18 (2) For purposes of adopting rules, [sections 3 and 5 and this section] are effective on passage and
19 approval.

20 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0260, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act creating a program within the Department of Commerce for licensing of home companions; providing the powers and duties of the department; prohibiting the use of names or initials indicating licensure unless licensed by the department; providing a penalty; providing requirements for licensure; and providing for fees commensurate with costs of the licensing program.

ASSUMPTIONS:

1. In order for services currently provided by personal care attendants (PCAs) to remain eligible for Medicaid reimbursement, these individuals would have to become licensed home companions (LHC).
2. There are 3,000 personal care attendants (PCAs) in the state currently. It is assumed that all of these individuals would apply for licensure as licensed home companions (LHC) during fiscal 1998 and an additional 500 individuals would apply during fiscal 1999.
3. In order to become a LHC, an individual must demonstrate knowledge, skills, and abilities in certain areas such as first-aid, CPR and care of clients as specified in rule, must file a \$2,000 bond, must pass a written examination, and must demonstrate "fitness of character".
4. The state anticipates that these requirements will be determined for applicants through requiring training in first-aid and CPR (cost of \$32 per individual), requiring posting of a bond as outlined in the bill (cost of \$100 per individual to file), administering a written examination (\$55 per individual), and law enforcement and credit checks (\$72 for local law enforcement, FBI, and personal credit checks including fingerprinting). The individual seeking licensure will be required to incur the cost of first-aid and CPR training as well as the cost of posting a bond and present documentation of these items when applying for licensure. However, these costs will not be reflected in the application fee charged by the Department of Commerce (DOC).

Department of Commerce/POL Bureau (DOC):

5. An original application fee would be \$165 for 3,000 applicants in fiscal year 1998 and in fiscal year 1999, 500 new applicants would pay the \$200 original fee. In subsequent biennia, e.g. fiscal year 2000, the 3,000 licensees would renew biennially and pay \$50. This will cover the cost of the exam (\$55) and background check (\$72) as well as overhead for the department.
6. Only individuals using the title "licensed home companion" would fall under the licensing and regulatory functions of DOC.
7. A consultant will be required to research and recommend to the DOC the different levels of licensure and the appropriate skills, training, or experience necessary for different levels. A consultant is estimated at \$50,000.
8. The DOC is not aware of a national or regional examination that exists to cover this new licensing category. An examination service would be contracted with to develop appropriate levels of exams which are valid and legally defensible. It is anticipated that the development of an examination could cost at least \$200,000. (The cost of developing this exam is included in the examination cost of \$55.)
9. Administration of this program at DOC will require 2.00 FTE; a grade 14 program manager (\$29,135) and a grade 9 licensing technician (\$19,264). Total personal services costs at DOC will be \$48,399 for salaries and benefits.
10. Equipment costs for the two staff include desks, chairs, computers, and file cabinets at a cost of \$8,000.

(Continued)

Dave Lewis 2-10-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DEBBIE SHEA, PRIMARY SPONSOR DATE

Fiscal Note for SB0260, as introduced

SB 260

(continued)

11. Operating costs for implementation of this program include administrative rule charges, administrative rule hearings, printing of forms, supplies and materials, postage, telephone, rent, and indirect costs. Estimated costs are \$11,720 in fiscal year 1998 and \$8,540 in fiscal year 1999.
12. Start-up revenue would have to be borrowed from the general fund until fees could be collected and additional revenue may have to be borrowed for daily operations until the first biennial renewal.

Department of Health and Human Services:

13. The costs incurred for licensure are assumed to be a cost of doing business for licensed home companions which will be passed on as a higher cost per Medicaid service provided. (Reimbursement for services provided by these individuals under Medicaid are reimbursed on a cost basis.) These will include the costs of DoC license fees (\$165 per individual in fiscal 1998 and \$200 per individual in fiscal 1999 and thereafter for new licenses), posting a bond (\$100 per individual), and first-aid/CPR training (\$32), for a total of \$297 per LCH in fiscal 1998 and \$332 per LCH in fiscal 1999. Assuming all of these costs come back to Medicaid in the form of increased charges, costs would increase \$891,000 in fiscal 1998 and \$166,000 in fiscal 1999.
14. The general fund matching rate for Medicaid funds is 29.83% in fiscal year 1998 and 28.88% in fiscal year 1999.
15. It is assumed that wages will not increase as a result of additional qualifications for LHC, and subsequently passed back to Medicaid as a cost. The current average wage is approximately \$5.50 per hour. A total of 1.698 million hours of personal care were paid for in fiscal year 1996. (For example, if a 50 cent per hour increase was necessary to retain qualified staff, additional costs of \$849,000 would be incurred by the Medicaid program.)

Department of Justice:

16. The Department of Justice (DOJ) will be required to process an estimated 3,000 fingerprint based record checks in fiscal 1998 and an additional 500 checks in fiscal 1999. The Identification Bureau's record check fee is \$8 a record. This fee is deposited in the general fund. (\$8 x 3,000 = \$24,000 FY98 and \$8 X 500 = \$4,000 FY99.)
17. To handle increased fingerprint record check workload, DOJ will need contracted services of \$7,020 for approximately 780 hours of work in fiscal 1998. In addition, 3,000 fingerprint cards will need to be run through the automated fingerprint information system (AFIS) at a cost of \$3 per card. This total cost will be \$9,000 in fiscal 1998 and \$1,500 in fiscal 1999.
18. Additional operating costs of \$1,250 in fiscal 1998 and \$300 in fiscal 1999 will be required for supplies, telephone, and travel costs.

FISCAL IMPACT:

Expenditures:

Department of Commerce/POL Bureau:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal Services	48,399	48,399
Operating expenses	477,720	72,040
Equipment	<u>8,000</u>	<u>0</u>
Total	534,119	120,439

Funding

General Fund (01)	39,119	20,439
SSR (License Fees (02))	<u>495,000</u>	<u>100,000</u>
Total	534,119	120,439

Revenues:

SSR (License Fees (02))	495,000	100,000
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Department of Public Health and Human Services:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Benefits expenses	891,000	166,000
<u>Funding</u>		
General Fund (01)	265,785	47,941
Federal Funds (03)	625,215	118,059
Total	891,000	166,000

Department of Justice:

Operating expenses	17,270	1,800
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Funding

General Fund (01)	17,270	1,800
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Revenues:

General Fund (01)	24,000	4,000
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Net Impact on Fund Balance: (Revenue minus expense)

General Fund (01)	(298,174)	(66,180)
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TECHNICAL NOTES:

The intent of this legislation is "to create an efficient, low-cost licensing program that will be run directly by the department [of commerce] without the use of a licensing board." SB 260, page 2, line 30 through page 3, line 2. The legislation authorizes the department to adopt rules regarding the disabilities and categories of clients which are not eligible for home health care, various levels of licensure depending on the needs of a client, and knowledge, skills and abilities required of a license candidate. Additionally, the department is required to implement an examination and a fee structure to cover the costs of administration.

It is a general rule that "if the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency, or if those limits are too broad, its attempt to delegate is a nullity." *State ex rel. Dreher v. Fuller*, 257 Mont. 445, 449 (1993). Moreover, "in order for the Legislature to properly delegate authority to an administrative agency, the statutory provisions must be 'sufficiently clear, definite, and certain to enable the agency to know its rights and obligations.'" *Id.* at 449-450.

SB 260 fails to provide the department with those guidelines necessary to effectively implement this legislation. The department is made responsible for determining the disabilities or categories of clients eligible for home companions although the department does not have the technical expertise to make such determinations. Likewise, the legislature is attempting to delegate the ability to determine different levels of licensing when, in fact, the legislature has not provided any guidance on the manner in which licensing levels will be delineated, including skills, training, or experience which may be appropriate to each level of licensure.

The legislature has delegated to the department on the issue of license applicants' trustworthiness and competency. To accomplish this task, the legislature has authorized the department to conduct background investigations, yet it has provided no specificity with regard to the extent to which a background check may be conducted insofar as what types of checks are permissible (e.g., FBI criminal checks, personal interviews, interviews with applicant family and friends, credit checks, etc.). Without more specificity, it will be virtually impossible for the department to defend such a delegation of authority from the legislature.

It will be a criminal offense to practice without a license. In this instance, without a definitive statement of what type of activities constitute the practice of home companionship, the ability of a county attorney to successfully prosecute a charge of unlicensed practice will be severely hampered. It is fundamental that anyone subject to criminal charges must have an adequate opportunity to discern what activities are criminal.

(Continued)

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay?
(Please explain)

No. Licensing fees paid by applicants for a licensed home companion will support costs incurred by the Department of Commerce. The general public, which utilizes the services of licensed home companions benefit indirectly.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Problems which arise in regard to services provided by licensed home companions can be mitigated by resources funded directly by fees from those regulated rather than resources from the general fund.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? XX Yes ___ No (if no, explain)

d) Does the need for this state special revenue provision still exist? XX Yes ___ No (Explain)

Fees collected will be deposited in a new Special Revenue Account of the Department of Commerce.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No. The legislature establishes spending authority for each biennium for dedicated revenue. The legislature also sets priorities when it considers executive budget priorities. The legislative code committee provides oversight for the process of setting fees by rule to cover costs.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need?
(Please explain)

Yes, provided the legislature continues to mandate the regulation and licensing of the professions.

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The account maintains solvency by raising or lowering fees to keep funds commensurate with costs. If activities were general funded, its possible that the boards would not maintain revenue necessary to support their programs. This greatly contributes to both accounting and auditing efficiency.