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SENATE BILL 823

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO HEALTH CARE PROVIDERS; EXEMPTING CERTAIN PROVIDERS
FROM VICARIOUS LIABILITY FOR THE ACTIONS OF A PERSONAL CARE
ATTENDANT HIRED AND TRAINED BY A CONSUMER OR HIS
REPRESENTATIVE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Assistance Act is
enacted to read:

" [NEW MATERIAL] FISCAL INTERMEDIARY-- EXEMPTIONS-- WORKERS'
COMPENSATION. --

A. A fiscal intermediary shall not be subject to
vicarious liability as an employer or principal for a wrongful
act committed by a personal care attendant if the attendant:

(1) is not a current or former employee of the
fiscal intermediary;

1 (2) has not received training or instruction
2 from the fiscal intermediary with respect to providing personal
3 care services to a disabled person, not including
4 administrative paper work;

5 (3) has been hired by and received training or
6 instruction from the consumer or his authorized representative
7 to provide personal care to the consumer; and

8 (4) provides basic assistance with daily
9 living activities that do not require the education,
10 certification or training of a licensed health care
11 practitioner.

12 B. A fiscal intermediary may identify a personal
13 care attendant as a covered employee with the fiscal
14 intermediary's workers' compensation carrier solely to provide
15 workers' compensation coverage in the event of a work-related
16 injury. Nothing in this subsection shall be construed to
17 create an employer-employee relationship between the fiscal
18 intermediary and the personal care attendant.

19 C. Nothing in this section shall be construed to
20 provide the fiscal intermediary with immunity from a claim for
21 a wrongful act committed by the fiscal intermediary or its
22 employees.

23 D. As used in this section:

24 (1) "consumer" means a person who is eligible
25 for and receives state-funded or -operated services based on

underscored material = new
[bracketed material] = delete

1 the person's disabilities;

2 (2) "fiscal intermediary" means a provider
3 that furnishes administrative assistance for a consumer who
4 selects a consumer-directed, rather than consumer-delegated,
5 personal care program;

6 (3) "personal care attendant" means a person
7 who provides assistance to a consumer with activities of daily
8 living, including bathing, dressing, eating, transportation,
9 shopping and similar activities; and

10 (4) "personal care program" means a state-
11 funded or -operated support program, including medicaid, that
12 provides the services of a personal care attendant for certain
13 disabled individuals. "