

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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:

"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;

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

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

(4) provides basic assistance with daily

1 living activities that do not require the education,
2 certification or training of a licensed health care
3 practitioner.

4 B. A fiscal intermediary may identify a personal
5 care attendant as a covered employee with the fiscal
6 intermediary's workers' compensation carrier solely to
7 provide workers' compensation coverage in the event of a
8 work-related injury. Nothing in this subsection shall be
9 construed to create an employer-employee relationship
10 between the fiscal intermediary and the personal care
11 attendant.

12 C. Nothing in this section shall be construed to
13 provide the fiscal intermediary with immunity from a claim
14 for a wrongful act committed by the fiscal intermediary or
15 its employees.

16 D. As used in this section:

17 (1) "consumer" means a person who is
18 eligible for and receives state-funded or -operated services
19 based on the person's disabilities;

20 (2) "fiscal intermediary" means a provider
21 that furnishes administrative assistance for a consumer who
22 selects a consumer-directed, rather than consumer-delegated,
23 personal care program;

24 (3) "personal care attendant" means a
25 person who provides assistance to a consumer with activities

